

BIAŁYSTOK LAW BOOKS

BLB

9

Urszula K. Zawadzka-Pąk

POLISH FINANCIAL LAW



Temida2
Białystok 2014

Editor in Chief of Publishing House Temida 2: Cezary Kosikowski

Chief: Emil W. Pływaczewski

Scientific Board:

Members from University of Białystok: Stanisław Bożyk, Adam Czarnota, Leonard Etel, Ewa M. Guzik-Makaruk, Adam Jamróz, Dariusz Kijowski, Cezary Kulesza, Agnieszka Malarewicz-Jakubów, Maciej Perkowski, Stanisław Prutis, Eugeniusz Ruśkowski, Walerian Sanetra, Joanna Sieńczyło-Chlabicz, Ryszard Skarzyński, Halina Świączkowska, Mieczysława Zdanowicz

National Members: Marian Filar (Nicolaus Copernicus University in Toruń), Edward Gniewek (University of Wrocław), Lech Paprzycki (Supreme Court)

Foreign Members: Lidia Abramczyk (Yanka Kupala State University of Grodno, Belarus), Vladimír Babčák (University in Kosice, Slovakia), Renata Almeida da Costa (La Salle University, Brasil), Chris Eskridge (University of Nebraska, USA), Jose Luis Iriarte Angél (University of Navarra, Spain), Marina Karasjewa (Voronezh State University, Russia), Aleksiej S. Kartsov (Federal Constitutional Tribunal in Sankt Petersburg, Russia), Bernhard Kitous (University of Rennes, France), Jolanta Kren Kostkiewicz (University of Bern, Switzerland), Martin Krygier (University of New South Wales, Australia), Anthony Minnaar (University of South Africa, Republic of South Africa), Antonello Miranda (University in Palermo, Italy), Petr Mrkyvka (Masaryk University, Czech), Marcel Alexander Niggli (University of Fribourg, Switzerland), Andrei A. Novikov (Saint Petersburg State University Russia), Sławomir Redo (University of Vienna, Austria), Jerzy Sarnecki (Stokholm University, Sweden), Bernd Schünemann (University of Munich, Germany), Kevin Saunders (Michigan State University, USA), Sebastiano Tafaro (University of Bari, Italy), Wiktor Trinczuk (Kyiv University of Tourism, Economics and Law, Ukraine), Keiichi Yamanaka (Kansai Univesrity, Japan).

Editor-in-Chief: Jerzy Banasiuk

Cover design: Jerzy Banasiuk

Publisher: Temida 2, Faculty of Law, University of Białystok

Series Editor: Izabela Kraśnicka

Reviewer: Marcin Tyniewicki

Copyright © 2014 by Temida 2, Poland. All rights reserved. Printed in Poland. This publication is protected by Copyright and permission should be obtained from the publisher prior to any reproduction, sortage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise.

ISBN: 978–83–62813–61–2

ISSN: 2083–9790

Temida 2, Mickiewicza 1, 15–213 Białystok, POLAND

Tel.: (+48) 85 7457168 • Fax: (+48) 85 7406089

temida2@uwb.edu.pl www.temida2.pl

Table of contents

List of abbreviations	9
Introduction.....	11

Part 1

Introductory Issues

1. Legal Sources of Polish Financial Law	13
2. Branches of Financial Law and its Interdisciplinary Character.....	26
3. Basis Definitions	27
4. Public Funds.....	28
5. Public Finances Sector	30

Part 2

State Budget

1. State Budget, Budget Act and European Funds Budget	41
2. Budgetary Principles.....	46
3. State Budget Revenue and Expenditure.....	48
4. Stabilising Spending Rule.....	55
5. State Budget Process.....	57
5.1. Constitutional Provisions.....	57
5.2. Mode of Preparing and Approving of State Budget.....	59
5.3. Execution of Budget Act	62
6. Multiannual State Financial Plan	69

Part 3

Budget of Local Government Units

1. Basic Definitions	71
----------------------------	----

2. Local Budget Revenues and Expenditures	73
3. Individual Debt Ratio.....	74
4. Local Budget Process.....	77
4.1. Mode of Preparing and Approving the Local Budget	77
4.2. Execution of Local Government Unit’s Budget Resolution..	79
5. Local Government Multiannual Financial Forecast	85

Part 4

Performance Budget

1. Essence of Performance Budget	87
2. Principles of Performance Budget	92
3. Performance Budgeting as Instrument of New Public Management	97
4. Traditional Budget versus Performance Budget.....	98
5. Performance Budgeting at Local Level	103

Part 5

Public Finance Control

1. Internal Control.....	105
1.1. Preliminary Control realised by Chief Accountant	105
1.2. Management Control	106
1.3. Internal Audit.....	108
2. External Control.....	109
2.1. The Supreme Audit Office.....	109
2.1.1. Legal Framework	109
2.1.2. Principles of Audit Procedure	112
2.1.3. Audit Scope and Audit Criteria.....	114
2.1.4. Organisation and Competences of the Supreme Audit Office	116

2.2. Regional Chambers of Auditors (pl. regionalne izby obrachunkowe)	118
2.2.1. Legal Frameworks of the Regional Chambers of Auditors.....	118
2.2.2. Organisation of the Regional Chambers of Auditors.....	119
2.2.3. Functions of the Regional Chambers of Auditors.....	120

Part 6

Public Finance Discipline Violation Liability

1. Legal Framework	127
2. Material Scope of Liability	128
3. Personal Scope of Liability	130
4. Principles of Liability	130
5. Institutions Adjudicating in the domain of Public Finances Discipline Violation	131
6. Penalties for Violation in the domain of Public Finances Discipline Violation	132
 Bibliography	 135

LIST OF ABBREVIATIONS

- Constitution – Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [Constitution of the Republic of Poland of April 2, 1997] (Dz.U. 1997, vol. 78 item 483, with amendments)
- Discipline Act – Ustawa z 17 października 2004 r. o odpowiedzialności za naruszenie dyscypliny finansów publicznych [Public Finance Discipline Violation Liability Act of Dec. 17, 2004] (consolidated text, Dz.U. 2005, vol. 14 item 114, with amendments)
- Dz.U. – Official Journal of Republic of Poland
- NIK – Supreme Audit Office (pl. *Najwyższa Izba Kontroli*)
- NIK Act – Ustawa z dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli [Supreme Audit Office Act of Dec. 23, 1994] (Dz.U. 1994, vol. 13, item 59, with amendments)
- OJ – Official Journal of European Union
- PFA – Ustawa z dnia 29 sierpnia 2009 r. o finansach publicznych [Public Finances Act of Aug. 29, 2009] (Dz.U. 2009, vol. 157, item 1240, with amendments)
- RIO – Regional Chamber of Auditors (pl. *regionalna izba obrachunkowa*)
- RIOs Act – Ustawa z 7 października 1992 r. o regionalnych izbach obrachunkowych [Regional Chamber of Auditors Act of Oct. 7, 1992] (Dz.U. 1992, vol. 85, item 428, with amendments)

- VAT Tax Act – Ustawa z 11 marca 2004 r. o podatku od towarów i usług [Tax on Goods and Services Act of March 11, 2004] (Dz.U. 2004, vol. 54, item 535, with amendments)
- WPF – Local Government Multiannual Financial Forecast (pl. *Wieloletnia Prognoza Finansowa*)
- WPPF – Multiannual State Financial Plan (pl. *Wieloletni Plan Finansowy Państwa*).

INTRODUCTION

During the last twenty years the Polish Financial Law has significantly changed – especially under the influence of the European Union regulations and the impact of globalisation – incorporating some universal solutions applicable also in many European countries. However, the Polish Financial Law is also characterised by some quite distinctive features, typical only for the Polish legal system.

It is the first book presenting Polish financial law in comprehensive way for the English-speaking readers. The aim of this study is to help to understand to the non-Polish language readers the general assumptions as well as the details of the Polish financial law. The author wishes as well that this publication was helpful to representatives of scientific world to conduct their comparative legal researches on public finances institutions incorporating to them the Polish solutions.

This book presents the major issues of Polish financial law in six chapters. The first one presents legal sources and branches of financial law, as well as the basis definitions. The next two chapters present the institution of state and local budget (the basis definitions, the budget process as well as the relations of annual budgetary planning with the multiannual programming of public finances). The fourth chapter discusses the institution of the performance budget as an instrument of efficiency and efficacy improvement of public tasks realisation. The fifth chapter puts under discussion the questions of public finances control in Poland, both the internal one (the preliminary control realised by chief accountant, the management control and the internal audit) and the external one (executed by the Supreme Audit Office and the Regional Chambers of Auditors). Finally, the last chapter discusses public finance discipline violation liability.

The legal situation presented in the book is valid for the 1st June 2014.

Białystok, June 2014
Urszula K. Zawadzka-Pak

INTRODUCTORY ISSUES

1. Legal Sources of Polish Financial Law

The sources of Polish financial law can be divided in two main categories: **the universally binding acts and the other ones**. Among the legal acts of the first category can be classified (article 87 of Constitution): the Constitution of the Republic of Poland, laws (statutes), ratified international agreements and regulations. Among **the second group** there are acts of local law that are universally binding only in the territory of the organ issuing such enactments (e.g. the resolution on the tax exemptions and the local tax rates, the resolution on the amount of local fees) and the acts of internal law (e.g. the budget resolution of local government unit).

The Constitution¹ is the most important legal act in Poland. It contains the special part devoted exclusively to public finances (Chapter 10). Additionally, the other chapters of the Constitution also contain the provisions regulating the public financial management. The constitutional provisions related to the financial law can be divided in the following four main issues:

- a) **The protection of the financial interests of the State** (articles 84, 146, 203, 204, 216, 220, 226, 227).

1 Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [Constitution of the Republic of Poland of April 2, 1997] (Dz.U.1997, vol. 78 item 483, with amendments). The English translation of the Polish Constitution cited in this publication, unless otherwise indicated, is based on the translation coming from the website of the Polish Sejm (www.sejm.gov.pl/prawo/konst/angielski/kon1.html).

Article 84

Everyone shall comply with his responsibilities and public duties, including the payment of taxes, as specified by statute.

Article 146

1. The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland.
2. The Council of Ministers shall conduct the affairs of State not reserved to other State organs or local government.
3. The Council of Ministers shall manage the government administration.
4. To the extent and in accordance with the principles specified by the Constitution and statutes, the Council of Ministers, in particular, shall:
 - 1) ensure the implementation of statutes;
 - 2) issue regulations;
 - 3) coordinate and supervise the work of organs of State administration;
 - 4) protect the interests of the State Treasury;
 - 5) adopt a Budget Bill;
 - 6) supervise the implementation of the State Budget and pass a resolution on the closing of the State's accounts and report on the implementation of the Budget;
 - 7) ensure the internal security of the State and public order;
 - 8) ensure the external security of the State;
 - 9) exercise general control in the field of relations with other States and international organisations;
 - 10) conclude international agreements requiring ratification as well as accept and renounce other international agreements;
 - 11) exercise general control in the field of national defence and annually specify the number of citizens who are required to perform active military service;
 - 12) determine the organisation and the manner of its own work.

Article 203

1. The Supreme Audit Office shall audit the activity of the organs of government administration, the National Bank of Poland, State legal persons and other State organisational units regarding the legality, economic prudence, efficacy and diligence.
2. The Supreme Audit Office may audit the activity of the organs of local government units, communal legal persons and other communal organisational units regarding the legality, economic prudence and diligence.
3. The Supreme Audit Office may also audit, regarding the legality and economic prudence, the activity of other organisational units and economic subjects, to the extent to which they utilise State or communal property or resources or satisfy financial obligations to the State.

Article 204

1. The Supreme Audit Office shall present to the Sejm:
 - 1) an analysis of the implementation of the State Budget and the purposes of monetary policy;
 - 2) an opinion concerning the vote to accept the accounts for the preceding budget year presented by the Council of Ministers;
 - 3) information on the results of audits, conclusions and submissions specified by statute.
2. The Supreme Audit Office shall present an annual report on its activities to the Sejm.

Article 216

1. Financial resources devoted to public purposes shall be collected and disposed of in the manner specified by statute.
2. The acquisition, disposal and encumbrance of property, stocks or shares, issue of securities by the State Treasury, the National Bank of Poland or other State legal persons shall be done in accordance with principles and by procedures specified by statute.
3. Any monopoly shall be established by means of statute.

4. The contracting of loans as well as granting guarantees and financial sureties by the State shall be done in accordance with principles and by procedures specified by statute.
5. It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.

Article 220

1. The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the Budget Bill.
2. The Budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State's central bank.

Article 226

1. The Council of Ministers, within the 5-month period following the end of the budget year, shall present to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.
2. Within 90 days following receipt of the report, the Sejm shall consider the report presented to it, and, after seeking the opinion of the Supreme Audit Office, shall pass a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers.

Article 227

1. The central bank of the State shall be the National Bank of Poland. It shall have the exclusive right to issue money as well as to formulate and implement monetary policy. The National Bank of Poland shall be responsible for the value of Polish currency.

2. The organs of the National Bank of Poland shall be: the President of the National Bank of Poland, the Council for Monetary Policy as well as the Board of the National Bank of Poland.
3. The Sejm, on request of the President of the Republic, shall appoint the President of the National Bank of Poland for a period of 6 years.
4. The President of the National Bank of Poland shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his office.
5. The Council for Monetary Policy shall be composed of the President of the National Bank of Poland, who shall preside over it, as well as persons distinguished by their knowledge of financial matters – appointed, in equal numbers, by the President of the Republic, the Sejm and the Senate for a period of 6 years.
6. The Council for Monetary Policy shall annually formulate the aims of monetary policy and present them to the Sejm at the same time as the submission of the Council of Ministers' Budget Bill. Within 5 months following the end of the budget year, the Council for Monetary Policy shall submit to the Sejm a report on the achievement of the purposes of monetary policy.
7. The organisation and principles of activity of the National Bank of Poland, as well as detailed principles for the appointment and dismissal of its organs, shall be specified by statute.

b) The guarantees of civil rights in the field of financial system
(articles 20, 22, 32, 61, 64, 217).

Article 20

A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.

Article 22

Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.

Article 32

1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Article 61

1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.
2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.
3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.
4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.

Article 64

1. Everyone shall have the right to ownership, other property rights and the right of succession.
2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.

3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.

Article 217

The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.

c) The financial guarantees for local government units (articles 165, 167–168)

Article 165

1. Local government units shall possess legal personality. They shall have rights of ownership and other property rights.
2. The self-governing nature of local government units shall be protected by the tribunals.

Article 167

1. Local government units shall be assured public funds adequate for the performance of the duties assigned to them.
2. The revenues of local government units shall consist of their own revenues as well as general subsidies and specific grants from the State Budget.
3. The sources of revenues for local government units shall be specified by statute.
4. Alterations to the scope of duties and authorities of local government units shall be made in conjunction with appropriate alterations to their share of public revenues.

Article 168

To the extent established by statute, local government units shall have the right to set the level of local taxes and charges.

- d) **The specific requirements for financial legislation** (articles 89, 118, 123, 190, 216–226).

Article 89

1. Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute – if such agreement concerns:
 - 1) peace, alliances, political or military treaties;
 - 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
 - 3) the Republic of Poland’s membership in an international organisation;
 - 4) considerable financial responsibilities imposed on the State;
 - 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.
2. The President of the Council of Ministers (the Prime Minister) shall inform the Sejm of any intention to submit, for ratification by the President of the Republic, any international agreements whose ratification does not require consent granted by statute.
3. The principles and procedures for the conclusion and renunciation of international agreements shall be specified by statute.

Article 118

1. The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
2. The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
3. Applicants, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

Article 123

1. The Council of Ministers may classify a bill adopted by itself as urgent, with the exception of tax bills, bills governing elections

to the Presidency of the Republic of Poland, to the Sejm, to the Senate and to organs of local government, bills governing the structure and jurisdiction of public authorities, and also drafts of codes.

2. The rules of procedure of the Sejm and the rules of procedure of the Senate shall define the modifications in the legislative procedure when a bill has been classified as urgent.
3. In the legislative procedure in relation to a bill classified as urgent, the deadline for its consideration by the Senate shall be 14 days and the period for its signature by the President of the Republic shall be 7 days.

Article 190

1. Judgments of the Constitutional Court shall be of universally binding application and shall be final.
2. Judgments of the Constitutional Court regarding matters specified in Article 188, shall be required to be immediately published in the official publication in which the original normative act was promulgated. If a normative act has not been promulgated, then the judgment shall be published in the Official Gazette of the Republic of Poland (pl. *Monitor Polski*).
3. A judgment of the Constitutional Court shall take effect from the day of its publication, however, the Constitutional Court may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Court shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.
4. A judgment of the Constitutional Court on the non-conformity to the Constitution, an international agreement or statute, of a normative act on the basis of which a legally effective judgment of a court, a final administrative decision or settlement of other matters was issued, shall be a basis for reopening proceedings,

or for quashing the decision or other settlement in a manner and on principles specified in provisions applicable to the given proceedings.

5. Judgments of the Constitutional Court shall be made by a majority of votes.

Article 216

1. Financial resources devoted to public purposes shall be collected and disposed of in the manner specified by statute.
2. The acquisition, disposal and encumbrance of property, stocks or shares, issue of securities by the State Treasury, the National Bank of Poland or other State legal persons shall be done in accordance with principles and by procedures specified by statute.
3. Any monopoly shall be established by means of statute.
4. The contracting of loans as well as granting guarantees and financial sureties by the State shall be done in accordance with principles and by procedures specified by statute.
5. It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. The method for calculating the value of the annual gross domestic product and national public debt shall be specified by statute.

Article 217

The imposition of taxes, as well as other public imposts, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.

Article 218

The organisation of the State Treasury and the manner of management of the assets of the State Treasury shall be specified by statute.

Article 219

1. The Sejm shall adopt the State budget for a budgetary year in form of a Budget Act.
2. The principles and procedure for preparation of a State Budget Bill, the level of its detail and the requirements for a Budget Bill, as well as the principles and procedure for implementation of the Budget, shall be specified by statute.
3. In exceptional cases, the revenues and expenditures of the State for a period shorter than one year may be specified in an Interim Budget. The provisions relating to a Budget Bill shall apply, as appropriate, to an Interim Budget Bill.
4. If a State Budget or an Interim Budget have not come into force on the day of commencement of a budget year, the Council of Ministers shall manage State finances pursuant to the Budget Bill.

Article 220

1. The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the Budget Bill.
2. The Budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State's central bank.

Article 221

The right to introduce legislation concerning a Budget, an Interim Budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers.

Article 222

The Council of Ministers shall submit to the Sejm a Budget Bill for the next year no later than 3 months before the commencement of the budget year. In exceptional instances, the bill may be submitted later.

Article 223

The Senate may, within the 20 days following receipt of the Budget, adopt amendments thereto.

Article 224

1. The President of the Republic shall sign the Budget or the Interim Budget submitted to him by the President of the Sejm within 7 days of receipt thereof, and order its promulgation in the Journal of Laws of the Republic of Poland (pl. *Dziennik Ustaw*). The provisions of Article 122, para. 5 shall not apply to the Budget or any Interim Budget.
2. If the President of the Republic has made request to the Constitutional Court for an adjudication upon the conformity to the Constitution of the Budget or Interim Budget before signing it, the Court shall adjudicate such matter no later than within a period of 2 months from the day of submission of such request to the Court.

Article 225

If, after 4 months from the day of submission of a Budget Bill to the Sejm, it has not been adopted or presented to the President of the Republic for signature, the President of the Republic may, within the following of 14 days, order the shortening of the Sejm's term of office.

Article 226

1. The Council of Ministers, within the 5-month period following the end of the budget year, shall present to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.
2. Within 90 days following receipt of the report, the Sejm shall consider the report presented to it, and, after seeking the opinion of the Supreme Audit Office, shall pass a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers.

Article 227

1. The central bank of the State shall be the National Bank of Poland. It shall have the exclusive right to issue money as well as to formulate and implement monetary policy. The National Bank of Poland shall be responsible for the value of Polish currency.
2. The organs of the National Bank of Poland shall be: the President of the National Bank of Poland, the Council for Monetary Policy as well as the Board of the National Bank of Poland.
3. The Sejm, on request of the President of the Republic, shall appoint the President of the National Bank of Poland for a period of 6 years.
4. The President of the National Bank of Poland shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his office.
5. The Council for Monetary Policy shall be composed of the President of the National Bank of Poland, who shall preside over it, as well as persons distinguished by their knowledge of financial matters – appointed, in equal numbers, by the President of the Republic, the Sejm and the Senate for a period of 6 years.
6. The Council for Monetary Policy shall annually formulate the aims of monetary policy and present them to the Sejm at the same time as the submission of the Council of Ministers' Budget Bill. Within 5 months following the end of the budget year, the Council for Monetary Policy shall submit to the Sejm a report on the achievement of the purposes of monetary policy.
7. The organisation and principles of activity of the National Bank of Poland, as well as detailed principles for the appointment and dismissal of its organs, shall be specified by statute.

The ratified international agreements constitute the second category of legal sources of the Polish financial law. In the domain of financial law they concern for instance the taxes (as the conventions for the avoidance of double taxation). After its publication in Journal of Laws of Republic of Poland, the ratified international agreement constitutes part of the national legal order and is directly applicable,

unless its application depends on the enactment of a statute. Additionally, the international agreement ratified upon prior consent granted by statute has precedence over statutes, if such the agreement cannot be reconciled with the provisions of such statutes (article 91 of the Constitution).

The majority of legal provisions of financial law are placed in **the statutes (the acts)** that are voted by both chambers of Polish Parliament² and signed by the President of the Republic of Poland. The most important statutes in the analysed field of law is Public Finance Act (PFA)³. The other statutes regulate e.g. the issues of revenues of local government units, the activity of central bank and other banks, control and audit institution and procedures, public procurement and about fifty so-called “fiscal statutes” that regulate particular types of taxes, e.g. VAT Tax Act.

The regulations contain the provisions implementing the statutory regulations (so containing more detailed and technical issues than the statutes). They are issued by particular ministers (in the domain of public finances by the Finance Minister in most of the cases) or by the Council of Ministers as a whole.

2. Branches of Financial Law and its Interdisciplinary Character

Financial law is an independent discipline of law that consists of numerous branches, such as: **the budgetary law** (concerning notion, scope and organisation of budget, public expenditures and debt, organisation and functioning of public finance sector units), **the tax law** (imposition and determination of legal construction of taxes, determination of rights and obligations of taxpayers and tax authorities), **the public banking law** (organisation, creation and supervision of banks), **the social and health security law** (gathering and using

2 The Polish Parliament is composed of two chambers: the Sejm (the lower one) that consists of 460 deputies and the Senate (the higher one) that consists of 100 senators.

3 Ustawa z dnia 29 sierpnia 2009 r. o finansach publicznych [Public Finances Act of Aug. 29, 2009] (Dz.U. 2009, vol. 157, item 1240, with amendments).

public funds in the insurance system), **the public procurement law** (selection procedures of suppliers of public goods and services), **the customs law** (charges related to international trade), **the tax criminal law** (protection of public financial order with criminal sanctions).

Financial law has strongly interdisciplinary character because of its relations with other domains of law, public and private ones. It should be noted that the financial law has been extracted from **the administrative law**, thus it is based on the forms of administrative actions, the public administrative system, the administrative procedures and division of tasks. Secondly, the detailed regulations on the state budgetary procedure are placed in the Constitution and take part of **the constitutional law**. Thirdly, the relations of the financial law and **the labour one** result from the fact that both domains cover the issues of social insurances (the financial law touches it from the point of its financing when the labour one from the point of rights and obligations of the insured persons and the insurers). Fourthly, due to the regulations of Fiscal Penal Code, the financial law is also related to **the penal law**. Fifthly, the financial regulations have strong links with **the international and European law** norms. Sixthly, the units of public finance sector can enter into civil agreements (e.g. tenancy), what testifies about the relations between the financial and **the civil law**. Finally, due to the existence of State Treasury Companies, the financial law is related to **the commercial law**.

3. Basis Definitions

In that section the basic terms of financial law, public finances, financial law, financial management and financial policy will be explained.

The content and the scope of the public finances and the financial law are strongly related one to each other, even if the first one is rather the economical notion, when the second one is the legal term. According to legal definition placed in PFA (article 3) **the public finances** include the processes associated with the collection of public revenues and its repartition, in particular: collection of public incomes

and revenues, public spending, financing the borrowing needs of the state budget, incurring liabilities involving public funds, management of public funds, management of public debt and settlements with the European Union budget. In turn, **the financial law** includes legal regulations relating to financial activity of state authorities, local governments units and different public institutions and organisational units. These units of public finances sector collect taxes and fees, make expenditures, pay salaries for functionaries and other employees, buy products and services, hold the investments. So these units of public finances sector carry out **the financial management**.

Finally, **the financial policy** is a conscious and deliberate activity of individuals and institutions involving the definition and the implementation of specific objectives by financial means (projects, activities). It can be carried out by public entities (public financial policy) and the other ones (e.g. owners and executives bodies of banks, enterprises, companies)⁴. In other words, the public financial policy means skilfulness of the collection and spending of public funds for the implementation of social and economic objectives. Thus, e.g. the tax collection realised by tax offices that constitutes only the realisation of legal provisions does not take part of such a conscious activity.⁵

4. Public Funds

The scope of public funds is defined by the article 5 of PFA. **The public funds** (pl. *środki publiczne*) comprise four main categories:

1. **Public revenues** (pl. *dochody publiczne*) that include:

- a) public levies, including: taxes, contributions, payments, distributions from state-owned enterprises and State Treasury companies as well as other pecuniary benefits due to the state, local government units, state special-purpose funds and other public finance sector units under separate statutes;

4 C. Kosikowski, E. Ruśkowski (eds.), *Finanse publiczne i prawo finansowe* [Public finances and financial law], Warszawa 2008, p. 33.

5 C. Kosikowski, *Finanse publiczne i prawo finansowe* [Public finances and financial law], Warszawa 2001, p. 14.

- b) other revenues of the state budget, local government units and other public finance sector units due under separate statutes or international agreements;
 - c) proceeds from sales of goods and services provided by public finance sector units;
 - d) revenues from properties of public finance sector units, including in particular: proceeds from tenancy and lease agreements, interest on funds maintained in bank accounts, interest on loans granted and on owned securities, dividends on account of owned property rights;
 - e) legacies, endowments and donations in monetary form to public finance sector units;
 - f) compensations due to public finance sector units;
 - g) amounts obtained by public finance sector units on account on granted sureties and guarantees.
2. **Incomes (pl. *przychody*) of the state budget and budgets of local government units and of other public finance sector units** as well coming from: sales of securities, privatisation of properties belonging to the State Treasury and properties belonging to local government units, repayment of non-bank and bank loans granted from public funds, received non-bank and bank loans.
3. **Incomes⁶ of public finance sector units** resulting from their activities and from other sources.
4. **Funds from the European Union budget** and non-reimbursable funds from aid granted by the Member States of the European Free Trade Agreement (EFTA) and from the other sources.

The public funds are allocated for the public expenditures (pl. *wydatki*) or for the public expenses (pl. *rozchody*). The Legislator

6 The term "incomes" in points 3 and 4 has different meaning. In the first case, incomes constitute generally reimbursable funds (with the exception of incomes from the privatisation), whereas in the second case the term "incomes" is used in the sense of caring out the economic activity (net revenue of an enterprise constitutes the difference between all incomes from its economic activity and costs of this activity).

only indicate the scope of public expenses (see below). All payments that are not the public expenses belong to the category of the public expenditures. **The public expenses** shall include payments on received non-bank and bank loans, buyback of securities, granted non-bank and bank loans, payments due under separate statutes financed with incomes from the privatisation of properties belonging to the State Treasury; other financial operations related to public debt and liquidity management; payments related to the State Treasury's shares in international financial institutions.

Therefore, in general the public revenues are spent for the public expenditures, whereas the public incomes are allocated for the public expenses.

5. Public Finances Sector

The article 9 of PFA contains the closed list of public finance sector units. Therefore, according to the Polish methodology the public finance sector comprises the following:

- 1) public authorities, including government administration authorities, authorities of state control and legal protection as well as courts and tribunals;
- 2) local government units and unions thereof;
- 3) budgetary units;
- 4) local government budgetary entities;
- 5) executive agencies;
- 6) budget institutions;
- 7) state special-purpose funds;
- 8) the Social Insurance Institution and the funds managed thereby as well as the Agricultural Social Insurance Fund and funds managed by the Chairperson of the Agricultural Social Insurance Fund;
- 9) the National Health Fund;
- 10) independent public healthcare units;

- 11) state higher education institutions;
- 12) the Polish Academy of Sciences and any organisational units established thereby;
- 13) state and local government cultural institutions as well as state film institutions;
- 14) other state or local government legal persons established under separate statutes with the aim of carrying out public tasks, excluding enterprises, research institutes, banks and commercial law companies.

This catalogue of public sector finance units was established using different criteria, such as⁷:

1. **Constitutional status** (public authorities, including government administration authorities, authorities of state control and legal protection as well as courts and tribunals; local government units and unions thereof).
2. **Organisational form** (budgetary units, local government budgetary entities, executive agencies, budget institutions, state special-purpose funds).
3. **Character and aim of activity** (independent public healthcare units, state higher education institutions, state and local government cultural institutions, state film institutions).
4. **Expressly named units** (the Social Insurance Institution and the funds managed thereby, the Agricultural Social Insurance Fund and funds managed by the Chairperson of the Agricultural Social Insurance Fund, the National Health Fund, the Polish Academy of Sciences and any organisational units established thereby).
5. **Legal form** (other state or local government legal persons established under separate statutes with the aim of carrying out public tasks, excluding enterprises, research institutes, banks and commercial law companies).

7 K. Sawicka, *Formy organizacyjno-prawne jednostek sektora finansów publicznych* [Organisational and legal forms of public finances sector units] in: E. Ruśkowski (ed.), *System prawa finansowego* [System of financial law], t. 2., Warszawa 2010, p. 43.

In general there are two financing (budgeting) methods of public sector units: the gross budgeting method and the net one. If the public sector finance unit is financed according to **the gross budgeting method** its financing (and therefore its functioning as well) does not depend on the gained funds. It means these public finance sector unit cover its expenditures directly from the state (or local government unit) budget and any gained revenues are directly transferred to the appropriate (state or local) budget. In the Polish legal system only the budgetary units are financed in that way. On the other hand, if the public sector finance unit has **the net budgeting form** it means that it partially retains gained revenues and partially is financed from the state or local government funds. Even if there are some differences between particular forms of net budgeting, in general, these units can retain at least part of the gathered revenues (e.g. coming from the sold products or services) and the amount that they should transfer to the state (or local government unit) budget is determined pursuant to the binding legal provisions on the basis of the financial result of this unit (surplus or deficit).

Let's look closely to the particular organisational and legal forms of public sector finance units in Poland. **The budgetary units (pl. *jednostki budżetowe*)** constitute organisational units without legal personality which cover their expenditures directly from the state (or local government unit) budget and transfer them all collected revenues. There are two categories of the budgetary units: the state budgetary units (i.e. courts, tribunals, the office of the Senate, prisons) and the local ones (i.e. primary or secondary schools, municipal offices, social assistance centres). The state budgetary units are established, merged and liquidated by ministers, heads of central offices, province governors (government's representative in territory) and other authorities operating under separate acts, whereas the local budgetary units (commune, district or provincial budgetary units) are established, merged and liquidated by decision-making authorities of local government units. The budgetary units act on the basis of the statute specifying in particular the name, registered office and aim of activity thereof. Financial management of a budgetary units is based on the annual revenues and expenditures plan (the financial plan).

The local government budgetary entities (pl. *samorządowe zakłady budżetowe*) constitute the second organisational form of public finance sector (note that currently there are no more the state budgetary entities). It is a specific form, separated financially and organisationally which combines simultaneously the features of an entrepreneur and an entity implementing public tasks. The choice of the establishment of the local government budgetary entity is justified when the revenues from its activity largely cover the costs, but for social reasons the profits cannot be maximised.⁸ The local governments budgetary entities can be established only to the realisation of selected own tasks of local governments units (article 14 PFA), namely:

- a) housing and administration of commercial premises,
- b) roads, streets, bridges, squares and traffic organisation,
- c) waterworks and water supply systems, sewage systems, removal and treatment of municipal waste, maintaining cleanliness and order as well as sanitary facilities, dumping sites and also neutralisation of municipal waste, providing supplies of electric energy, heating and gas,
- d) local mass transport,
- e) open-air markets and indoor markets,
- f) communal greenery and tree canopy cover,
- g) physical activities and sport, including maintenance of recreational areas and sporting facilities,
- h) social assistance, social and professional reintegration and social rehabilitation of disabled persons,
- i) maintaining a variety of exotic and domestic animal species, including in particular keeping animals endangered with extinction in order to protect them outside their natural habitats,
- j) cemeteries.

It should be noted that there is no legal interdiction to carry out these tasks in other legal forms different to local government budgetary

8 E. Rutkowska-Tomaszewska, Jednostki sektora finansów publicznych [Public finances sector units] in: J. Blicharz (ed.), Prawne aspekty prywatyzacji [Legal aspects of privatisation], Wrocław 2012, p. 108.

entities. For example the majority of units providing services of local mass transport act in other legal forms (mainly societies).

The local government budgetary entities do not have legal personality and are established, merged, transformed into a different organisational and legal form, as well as liquidated by the decision-making authorities of a local government unit. The local government budgetary entity runs a financial management based on the method of net budgeting, what means that it transfers to the local government unit's budget the working assets surplus determined at the end of the reporting period (financial year), unless the decision-making authority decides otherwise. The local government budgetary entity performs its tasks against payment. It covers the costs of its activities from own incomes as well as it can obtain from the local government unit's budget:

- 1) the grants for specific entities (this kind of transfers has a general character and is designated for the whole activity of the subsidised entity);
- 2) the earmarked grants (designated for precisely defined aims, mostly in the form of co-financing particular services e.g. co-financing bus tickets);
- 3) the special-purpose grants for current tasks financed with the participation of the funds coming from the European Union budget, non-reimbursable funds from aid granted by the Member States of the European Free Trade Agreement (EFTA) and from other foreign sources;
- 4) the special-purpose grants for the financing or co-financing of investment implementation costs;
- 5) the one-off grant from the local government unit's budget for the initial provision of working assets (only for newly established local government budgetary entity).

Grants for the local government budgetary entity – excluding the grants from foreign sources and for financing or co-financing of investment – cannot exceed 50% of the costs of activities thereof. It is one of the reasons why this organisational form is not so popular.

Therefore, legislator does not require that the costs of the financial activities of the local government budgetary entity were paid in full with its own revenues and does not identify what part thereof should be covered from own revenues.⁹ The local government budgetary entity has the greater financial freedom in carrying out the current activity than budgetary units because it can make any amendments to its financial plan throughout the year in the event of posting higher than planned incomes and costs on the condition that any such amendment will not reduce transfers to the local government unit's budget or increase grants from the local government unit's budget.

The executive agencies (pl. *agencje wykonawcze*) are the next organisational form of public finances sector. The introduction to Polish legal system the institution of executive agencies was modelled on the solutions adopted in Council Regulation No 58/2003 of Dec. 19, 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ EU L 11 of 16.01.2003, p. 1.). Contrary to budgetary units and local government budgetary entities, the executive agencies have legal personality. They are the state legal person established under a separate statute in order to carry out state tasks. The act creating an agency defines its organisational and legal form, and its principles of financial management.

Among Polish executive agencies there are: the Agricultural Property Agency, the Military Housing Agency, the Military Property Agency, the Agency for Material Reserves, Polish Agency for Enterprise Development, the Agricultural Market Agency and the Agency for Restructuring and Modernisation of Agriculture and the National Science Centre.

Through the activities of executive agencies there is a link between the public funds (public grants and funds coming from foreign sources) and the funds obtained from other sources, what enables the realisation of important economic tasks that should be supported from state budget because of public interest. The activity of state intervention concerns,

9 *Ibidem*, p. 107.

among others, entrepreneurship development, agriculture, innovation, scientific researches and the acceleration of structural changes, including changes in ownership in the economy.¹⁰

Financial management of the executive agency is based on an annual financial plan. The draft of this plan is drawn up by the competent authority thereof in cooperation with the minister exercising supervision over the executive agency. After being approved by the minister exercising supervision, the draft is handed over to the Finance Minister in the mode and within the deadlines specified in the provisions regarding work on the Budget Bill. In general, in the revenues and expenditures plan the expenditures should not exceed the revenues. However, planned expenditures may exceed planned revenues with the approval of the minister exercising supervision over the executive agency issued in cooperation with the Finance Minister. Amendments to incomes and costs may be made in the financial plan of the executive agency with the approval of the minister exercising supervision over the agency issued after obtaining an opinion of the Sejm's Public Finances Commission. However, any amendments to the financial plan of the executive agency may not increase the agency's liabilities or negatively affect the agency's planned financial result, unless separate statutes provide otherwise. The Finance Minister should be immediately notified of any amendments made.

The executive agency as financed with net method is obliged to transfer to the state budget the surplus of funds determined at the end of the year and remaining after all tax liabilities have been settled. In specially justified cases (arising from the requirement to ensure effective and complete performance of tasks of the executive agency) the Council of Ministers may, on request of the minister exercising supervision over the executive agency, give its approval, by resolution, not to transfer this surplus.

The budget institutions (pl. *instytucje gospodarki budżetowej*) is the next organisational unit of the Polish public finances sector. It is a public finance sector entity established in order to perform

10 K. Sawicka, *op. cit.*, p. 62.

public tasks, which carries out specific tasks for fees and covers the costs of its activities and liabilities from own incomes. Its activity is based on the assumption of self-financing of realised public tasks. However, it may receive financial support from the state budget in the form of grants but only if separate statutes so provide. The budget institutions have the legal personality that is acquired in the moment of being registered in the National Court Register that includes mostly the information about entrepreneurs but also associations, social and professional organisations, foundations, etc. (however the budgetary units are not the entrepreneurs)¹¹. There are two modes of creation of budgetary institutions. Firstly, the budget institution may be established by the minister or the Head of the Office of the Prime Minister, with the Council of Ministers approval given on his request. In the second case, this approval is not necessary (only notification of Prime Minister is sufficient) and the budgetary institution is established by the authority or the head of the unit that has the special political position (i.e. Chancellery of the Sejm, the Chancellery of the President of the Republic of Poland, the Constitutional Court, the Supreme Audit Office etc.).

The budget institution should manage assets independently in a manner making the most effective use thereof. As it has been mentioned above it may receive grants from the state budget for the implementation of public tasks only when separate statutes provide to this effect. A newly established budget institution may be awarded a one-off grant for the initial provision of working assets. Contrary to the previously described organisational forms of public finances sector, the budgetary institution at the end of the year does not transfer to the state budget the surplus but it can use it in the next years. This idea results from the assumption of self-financing of budgetary institutions. In order to incur a liability exceeding 30% of annual incomes the budget institution is obliged to obtain an approval from the authority exercising functions of the founding authority. The draft of annual financial plan is provided to the authority exercising functions of the

11 C. Kosikowski, *Ustawa o finansach publicznych. Komentarz* [Public Finances Act. Commentary], Warszawa 2011, p. 129.

founding authority in the mode and within the deadlines specified in the provisions regarding work on the Budget Bill.

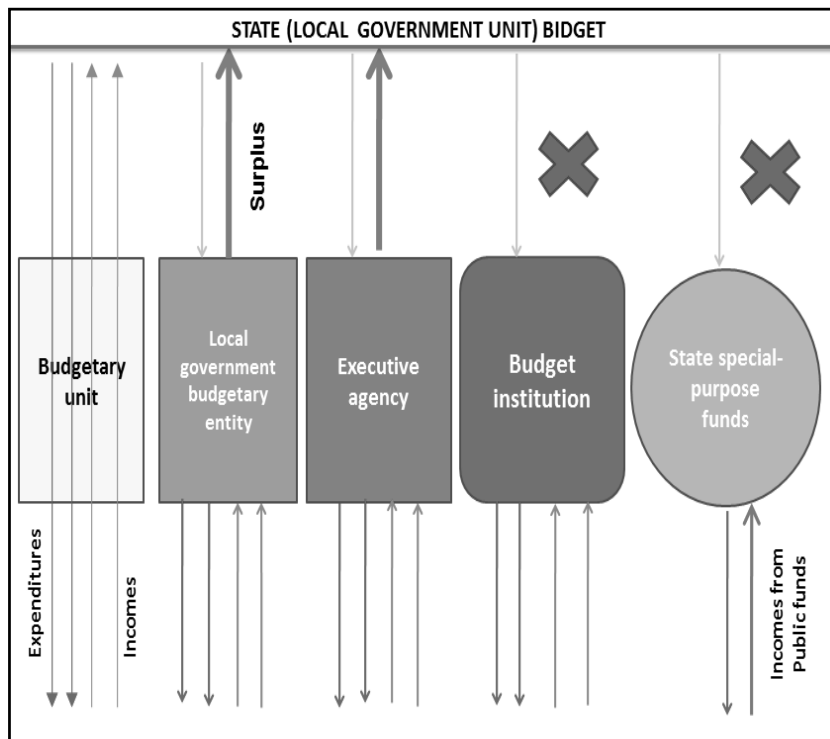
Finally, **the state special-purpose funds (pl. państwowe fundusze celowe)** will be presented as an organisational form of public finance sector occurring outside the budget, although usually in conjunction with it (thus they are sometimes called extra-budgetary funds¹²). The idea of a special-purpose fund consists of a link between the particular expenditure destined for the determined purposes and incomes derived from specific sources.¹³ As the example of the state special-purpose funds can be indicated: the Social Insurance Fund, the Fund for the Development of Physical Culture, the Modernisation Fund of the Armed Forces, the Labour Fund. Nowadays, the binding PFA does not provide the existence of local special-purpose funds (as the previous acts did it). The state special-purpose funds are established under a separate statute. They do not have a legal personality. In fact, they constitute a separate bank account at the disposal of the minister designated in the statute establishing the fund or any other authority designated in this statute. Their incomes come from public funds and are allocated for the implementation of specific state tasks. Funds of the state special-purpose may be utilised i.e. for granting loans to local government units if the statute establishing this fund provides to this effect. Sources of the state special-purpose funds may be utilised for granting loans to local government units where the statute establishing this fund provides to this effect. Costs of the state special-purpose fund may be covered only within owned financial resources, including grants from the state budget and funds carried forward from preceding periods. The amendments to the financial plan of the state special-purpose fund consisting in the increasing of projected revenues and respectively expenditures can be made. However, any amendments to the financial plan cannot result in increasing grants from the state budget.

12 C. Kosikowski, *Nowau stawa o finansach publicznych. Komentarz* [New Public Finances Act. Commentary], Warszawa 2010, p. 138.

13 T. Dębowska-Romanowska, *Fundusze systemu budżetowego* [Funds of budgetary system] in: M. Weralski (ed.), *System instytucji prawnofinansowych PRL* [System of legal and financial institutions of PRL], t. 2, Wrocław 1982, p. 397.

Below, we present the graphical presentation of financing of all presented above organisational and legal forms of public finance sector.

Scheme n°1. The graphical presentation of financing the forms of public finances sector in Poland.



Source: H. Dzwonkowski, *Formy organizacyjno-prawne jednostek sektora finansów publicznych [Organisational and legal forms of public finances sector units] with own modifications*, <http://kancelaria.poltax.pl>, last accessed June 4, 2014.

Part 2

STATE BUDGET

1. State Budget, Budget Act and European Funds Budget

The Polish Constitution defines neither “the budget act” nor “the budget”. It only states that the Sejm adopts the State budget for a budget year in the form of Budget Act and that the principle and the procedure for preparation of a State Budget Bill, the level of its detail and the requirements for it, as well as the principles and procedure for implementation of the Budget is specified by statute (article 219).

These constitutional provisions are detailed in PFA. Firstly, according the article 109 (1) PFA the budget act is the basis of financial management of the state in the relevant budget year. Secondly, according to the article 109 (2) PFA the budget act is composed of the state budget (a), the annexes (b) and the regulations which must be incorporated into the budget act hereunder or under separate statutes (c). However, the content of the article 109 (2) is no precise because it mixes the formal elements of the Budget Act and the material ones. From the formal point of view, the Budget Act comprises the part containing legal provisions (articles) which in the most of the cases make reference to annexes (a) and the annexes (b). On the other hand, from the point of content, the Budget Act comprises budget, i.e. financial plan (a) and the regulations which must be incorporated

into the budget act hereunder or under separate statutes (b). Below we present selected provisions of Budget Act for 2014.¹

Extract of Polish Budget Act for 2014 of 24th January 2014

Article 1.

1. The total amount of tax and non-tax **revenues of the state budget** is 277 782 224 000 PLN, as presented in the annex n°1.
2. The total amount of **state budget expenditure** is 325 287 369 000 PLN, as presented in the annex n°2.
3. The **state budget deficit** is fixed at 31 December 2014 for an amount of not higher than 47 505 145 000 PLN.

Article 2.

1. The total amount of tax and non-tax **revenues of the European funds budget** is 77 957 123 000 PLN, as presented in the annex n°3.
2. The total amount of **European funds budget expenditure** is 77 957 123 000 PLN, as presented in the annex n°4.
3. **The European funds budget deficit** is fixed for an amount of not higher than 391 702 000 PLN.

(...)

Article 12.

The **list and the amount of the grants** for specific entities and earmarked grants contains the annex n°9.

Article 13.

The list of **multiannual performance programs** is presented in the annex n°10.

(...)

Article 42.

This Act shall **enter into force on the date of the announcement, with effect from 1st January 2014.**

1 Ustawa budżetowa z dnia 24 stycznia 2014 r. [Budget Act of Jan. 24, 2014] (Dz.U. 2014, item 162).

Currently binding PFA does not contain any **definition of the budget**. Instead, it indicates the elements that the budget comprises, namely:

- 1) the aggregate amount of projected tax and non-tax revenues of the state budget,
- 2) the aggregate amount of planned state budget expenditures,
- 3) the amount of planned state budget deficit with the sources of financing thereof,
- 4) the aggregate amount of projected revenues of the European funds budget,
- 5) the aggregate amount of planned expenditures of the European funds budget,
- 6) the outturn (deficit or surplus) of the European funds budget,
- 7) the aggregate amount of planned state budget incomes,
- 8) the aggregate amount of planned state budget expenses,
- 9) the planned balance of state budget incomes and expenses,
- 10) the limit of liabilities on account of bank and non-bank loans incurred and securities issued.

In the doctrine, the term “budget” can be defined in the legal sense and in the economic one. The **state budget in Poland in the legal sense** was defined in Public Finances Act from 2005 as an annual plan of incomes, expenditures, revenues and expenses of public authorities, including government bodies, control and protection law bodies, courts and tribunals, that is voted in the form of Budget Act for a calendar year, that constitute the basis of financial management of the state in the budgetary year (article 95). For unknown reasons, there is no more definition of the state budget in the current PFA (when the definition of local budget was repeated from PFA from 2005). However, even without such a definition in currently binding PFA, the budget in the legal terms should be treated as a financial plan that has specific features fixed by the doctrine. According to T. Dębowska-Romanowska² the budget is

2 For more information about the definitions and characteristics of the budget see: T. Dębowska-Romanowska, Zagadnienia prawne wydatków publicznych na rzecz osób trzecich [Legal issu-

a public, general and simultaneously detailed financial plan, containing planned revenues and expenditures voted in the form of Budget Act by parliament for one budgetary year that constitutes the obligatory form of public financial management³. It can be summarised that **the state budget as a legal institution** is the plan that has the special force (the authorisation to collect revenues and to spend it), special legal form (budget act), special period of validity (one year).

On the other hand, **the state budget in economic terms** should be regarded as a centralised funds of money that are collected by the state and used in a planned manner to carry out its tasks and duties⁴.

In the present chapter, the term “European funds budget” was used few times, thus let’s explain this legal institution, especially that such a solution is not frequently used in other countries. In Poland this legal institution was introduced in 2010 by PFA (Poland became the member of EU the 1st May 2004, so its introduction was not directly related to the accession to the EU). The European funds budget was extracted from the state budget. According to the legal definition **the European funds budget** is an annual plan of revenues and refundable expenditures allocated for the implementation of programmes financed with the participation of European funds, excluding funds allocated for the implementation of technical assistance projects. The European funds budget comprises: revenues from the implementation of programmes financed with the participation of European funds and expenditures on the implementation of programmes financed with the participation of European funds to the extent subjected to reimbursement (article 117 PFA).

The European funds budget constitutes kind of sub-fund in frame of the state budget, however the cash flow between the state budget and the European funds one are allowed.⁵ In consequence, the legal

es of public expenditures on behalf of the third parties], Łódź 1993, p. 5–10.

3 T. Dębowska-Romanowska, Prawo finansowe. Część konstytucyjna wraz z częścią ogólną [Financial Law. Constitutional part with the general one], Warszawa 2010, p. 190.

4 C. Kosikowski, E. Ruśkowski (eds.), 2008, *op. cit.*, p. 301.

5 According to the provisions of 118 of PFA: 1. *The difference between revenues and expenditures of the European funds budget constitutes respectively a surplus of the European funds budget or a deficit of the European funds budget.* 2. *Neither the deficit of the European funds budget nor the surplus of the European funds budget are included in the state budget deficit or*

nature of the European funds budget is quite ambiguous. On the one hand, the legal provisions emphasise its autonomous nature in regard to the state budget (by defining the separate notions of deficit and surplus of European funds budget that are not added to the deficit or surplus of state budget). On the other hand, taking into account strictly legal aspects it constitutes some kind of the “hybrid institution⁶”: it has features of an internal special-purpose fund (although according to the classic budgetary principles it is forbidden) but in some sense it also has characteristics of special-purpose reserve used to extract funds coming from foreign resources. It should be also noted that part of sources of European funds budget (as well as of the state budget) are used to elaborate list of multiannual performance programmes that constitutes the appendix to Budget Act and thus does not constitute the separate from the state budget source envelope⁷.

The purpose of the introduction of the analysed institution, as it was presented in the justification for the Public Finances Bill, was to make more flexible planning and using of the resources for the tasks co-financed with funds from the general budget of the EU (e.g. Structural Funds, the Cohesion Fund, the funds of the Common Agricultural Policy) and from EFTA countries. However, it seems that there were also other arguments that have decided about the extraction of the European funds budget. In fact, revenues and expenditures placed in the European funds budget are balanced, however only over a period exceeding one year. Occurring deficit of European funds budget results from the time shift between spending funds for realisation of tasks co-financed from foreign sources and the refund of the incurred expenditures from the European Commission (since 2010 the European funds budget is deficient, the Polish government expects that it should remain deficient for four years and the surplus

the surplus respectively. 3. The deficit of the European funds budget is financed within the borrowing requirements of the state budget (such a deficit can appear e.g. in the situation when there are delays in the transfers of funds granted by the UE). 4. The surplus of the European funds budget is the source of repaying the state budget liabilities incurred to cover the deficit of the European funds budget.

- 6 E. Ruśkowski, J.M. Salachna (eds.), *Finanse publiczne. Komentarz praktyczny* [Public finances. Practical commentary], Gdańsk 2013, p. 466–467.
- 7 Z. Szpringer, *Budżet środków europejskich* [European funds budget] in: *Leksykon budżetowy* [Budgetary glossary], www.sejm.gov.pl, last accessed June 4, 2014.

should appear approximately 2015⁸). Thanks to the fact that the deficit of the European funds budget is not included in the state budget deficit, the adopted solution has enabled, generally speaking, to reduce the restrictiveness of existing constraints in the preparation budgets for the next budgetary year arising from the remedial procedures existing in Poland that oblige to take the special actions when the public debt exceeds certain limits. From that point, the introduction of European funds budget is judged very critically.⁹

2. Budgetary Principles

The budgetary principles constitute the postulates of public finances science representatives addressed to the Legislator concerning the appropriate functioning and the organisation of budgetary management aiming at the optimisation of public tasks realisation. In different terms, the budgetary principles can be also defined as desirable features of budget and budgetary management. However, the fulfilment of these features does not condition the existence of the budget or budgetary management (such features should have been inserted in the definitions of these notions).¹⁰ Among the basis budgetary principles can be mentioned: principle of universality, principle of unity, principle of non-assignments, principle of transparency, principle of specification, principle of annuality and the principle of equilibrium.

The principle of universality (known also as the principle of completeness or the principle of gross budgeting method) in the classical approach contains the postulate of inclusion in the state budget the full amounts of all revenues and expenditures. In other words, that principle postulates the application of the gross budgeting method in the sector of public finances sector. However, as we explained above (see subsection 1.5.) in the public finances sector not only the net budgeting

8 The declaration of Elżbieta Suchocka-Roguska, Finance Vice-minister, 28 October 2009, www.money.pl, last accessed May 2, 2014.

9 E. Ruśkowski, J.M. Salachna (eds.), *Finanse publiczne...*, p. 468.

10 C. Kosikowski, E. Ruśkowski (eds.), *Finanse publiczne i prawofinansowe* [Public finances and financial law], Warszawa 2006, p. 324.

method is used (by the budgetary units) but also the gross one (i.e. by local government budgetary entities, the executive agencies).

The principle of material unity (called also the principle of non-assignments) postulates that the budget constituted one envelope of funds, so all revenues should be destined to all expenditures. This principle is expressed in PFA, according to its article 42 (2) public funds coming from individual items cannot be allocated for the financing of expenditures listed by name, unless a separate statute provides for otherwise. This restriction does not apply to: the expenditures financed from loans granted by international financial institutions, as long as the agreement provides for to this effect, the expenditures financed from European funds and other funds coming from European Union, the costs incurred by units carrying out a business activity, executive agencies, budget institutions or other state legal persons and local government budget entities.

The special-purpose funds constitute the typical exception from the principle of material unity because in this case funds from particular sources are extracted from the general envelope of state budget and destined for particular expenditures. For example, the Social Insurance Fund receives social contributions that next are earmarked for the payment of social benefits and not for example for building public roads.

The principle of formal unity postulates that the budget was inserted in one, comprehensive legal act. Predominantly, the separate investments budgets, the annex budgets or the financial plan of special-purpose funds constitute the exceptions from this principle.

The principle of formal transparency postulates that the citizens could have the access to the information concerning budget in the phase of preparation, voting and execution, while **the principle of material transparency** postulates that the citizens not only have the access to these information, but additionally that they could understand them. In practice, it is much more difficult to effectively introduce the second principle. Among the means of the realisation of these two principles there are e.g. regular publication of different sorts of budgetary information (bills, acts, reports) or the access to the budgetary debates.

The principle of specification postulates that the budgetary incomes, revenues, expenditures and expenses were planned and executed with the detailed division. In practice, this principle is realised by the budgetary classification, i.e. parts, divisions, chapter, paragraphs (for more details see section 2.3.). The principle of specification facilitates the realisation of the principles of transparency, both formal and material ones. It should also be noted that the introduction of the requirement of the detailed budget presentation at the planning phase ensures that the parliament has the right to decide about public spending (even if the government has also the right to modify during budget execution the budgetary classification determined by the legislative authority in the way determined by legal provisions).

The principle of annuality requires that the budget concerned the period of one year. In exceptional cases, the revenues and expenditures of the State may be specified in an Interim Budget for a period shorter than one year (in practice up to three months). On the other hand, respecting of the principle of annuality is not contrary to the elaboration of multiannual financial plans that support annual budgetary planning (e.g. Multiannual State Financial Plan and Local Government Multiannual Financial Forecasts).

The principle of equilibrium in its traditional terms postulates that the budget was balanced (so the expenditures did not exceed the revenues). However, the traditional understanding of this principle has been changed when it turned out that even balancing of the budget did not protect states against the negative effects of the financial crisis. Nowadays the deficit is accepted, especially during good economic times. However, it is postulated to balance the budget during the whole economic cycle (i.e. in the period of 10 years).

3. State Budget Revenue and Expenditure

In the subsection 1.4. we have described all public revenues that were included by the Legislator to the category of public funds. Part of these public revenues was classified in the PFA (article 111) as **the state budgetary tax and non-tax revenues** that comprises:

- 1) taxes and charges to the extent which according to separate statutes does not constitute revenues of local government units, incomes of state special-purpose funds or other public finance sector entities;
- 2) customs duties;
- 3) distributions from state-owned enterprises and State Treasury companies;
- 4) dividend payments;
- 5) distributions from the National Bank of Poland;
- 6) payments of the surplus of funds of executive agencies;
- 7) revenues collected by state budgetary units unless separate statutes provide for otherwise;
- 8) revenues from tenancy and lease and also other agreements of similar nature regarding elements of State Treasury assets unless separate statutes provide for otherwise;
- 9) interest paid on funds collected in bank accounts of state budgetary units or public authorities unless separate statutes provide for otherwise;
- 10) interest paid on fixed-term deposits opened with funds collected in the central current account of the state budget;
- 11) interest paid on domestic and foreign loans granted from the state budget;
- 12) fines, tickets and other pecuniary penalties unless separate statutes provide for otherwise;
- 13) legacies, endowments and donations of pecuniary nature in favour of the State Treasury;
- 14) revenues from the sales of assets, objects and rights which do not constitute incomes from sales of securities or from the privatisation of properties belonging to the State Treasury and properties belonging to local government units,
- 15) other revenues specified in separate statutes or international agreements;

- 16) European funds and specified other funds from the European Union budget after they have been transferred to the revenue account of the state budget;
- 17) interest bought out by purchasers of Treasury bonds or the surplus resulting from the difference between the issue price and the face value of the Treasury bonds under disposal.

Collected budgetary revenues are subsequently allocated to **the state expenditures**. The article 112 of PFA details that they can be in particular¹¹ for the following:

- 1) the functioning of public authorities, including government administration authorities, authorities of state control and legal protection as well as courts and tribunals;
- 2) tasks performed by the government administration;
- 3) general subventions for local government units;
- 4) grants for local government units;
- 5) transfers to the European Union budget;
- 6) subventions for political parties;
- 7) grants for tasks specified with separate statutes;
- 8) servicing the public debt;
- 9) state contribution to the implementation of programmes financed with the participation of European funds.

As mentioned in the section 2.2., one of the budgetary principles, i.e. principle of specialisation postulates that the budgetary revenues, incomes, expenditures and expenses were planned and executed with the detailed division. This principle is realised via budgetary classification that in general terms consists of parts, divisions, chapters and paragraphs. The provisions of PFA determine the general rules of this budgetary specification, while the classification itself was established in the regulations of the Finance Minister¹².

11 Using the term "in particular" means that this expenditure catalogue is not close.

12 Rozporządzenie Ministra Finansów z dnia 4 grudnia 2009 r. w sprawie klasyfikacji części budżetowych oraz określenia ich dysponentów [Regulation of the Finance Minister concerning the classification of budgetary parts and the determination of its administrators] (Dz.U. vol. 211,

All public revenues, expenditures, incomes and expenses (including the budgetary ones) are classified in accordance with **divisions and chapters** (specifying the type of activities) and **paragraphs** (specifying the type of revenue, income or expenditure or the source of income) (article 39 PFA).

However, the information inserted in the Budget Act (more precisely in its annexes) is presented in a little different way, because the state budget tax and non-tax revenues are included in the Budget Act in accordance with **sources** of revenues, **parts and divisions** of budget classification, while state budget **expenditures** are divided into **parts, divisions and chapters** of budget expenditures classification and expenditures groups¹³.

Therefore, **the parts** were created only to the budgetary funds and constitute the highest level of budgetary classification of budgetary revenues, expenditures, incomes and expenses. They correspond to public authorities, state control, courts, tribunals and other authorities enumerated in article 139 (2)¹⁴, government administration with the reservation that separate parts of the budget are respectively determined for individual departments of government administration and for the offices supervised by the Prime Minister. Separate parts of the state budget comprise as well: general subventions for local

item 1633, with amendments) and rozporządzenie Ministra Finansów z dnia 2 marca 2010 r. w sprawie szczegółowej klasyfikacji dochodów, wydatków, przychodów i rozchodów oraz środków pochodzących ze źródeł zagranicznych [Regulation of the Finance Minister concerning classification of revenues, expenditures, incomes and expenses and the funds from foreign sources] (Dz.U. vol. 38, item 207, with amendments).

13 The article 124 of PFA determines the following expenditures groups: grants and subventions, benefits for natural persons, current expenditures of budgetary units, property expenditures, expenditures to service the State Treasury debt, expenditures on the implementation of programmes financed with the participation of the European Union funds, own funds of the European Union.

14 Article 139 (2) of PFA enumerates the public authorities and institutions that have special budgetary position because they decide themselves about their revenues and expenditures plan and the Finance Ministers during the preparation of the Budget Bill cannot reduce the proposed amounts. In this group are: the Chancellery of the Sejm, the Chancellery of the Senate, the Chancellery of the President of the Republic of Poland, the Constitutional Court, the Supreme Chamber of Auditors, the Supreme Administrative Court together with provincial administrative courts, the National Council of the Judiciary, tribunals of common law, the Ombudsman, the Ombudsman for Children, the National Broadcasting Council, the General Inspectorate of Personal Data Protection, the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, the National Electoral Office and the National Labour Inspectorate.

government units; general reserve; special-purpose reserves; servicing the State Treasury debt; own funds of the European Union; incomes and expenses related to the financing of the borrowing requirements of the state budget. In justified cases and on request of the competent minister, separate parts in the state budget may be created for the central offices supervised by the minister, the state organisational units which are not public authorities or government administration authorities; the general tasks on the condition that it is required to separate the relevant part in order to ensure ongoing control of revenues or expenditures (article 114 of PFA). In consequence, in the currently binding budgetary classification there are parts that correspond to public authorities or institutions (i.e. the Ombudsman) as well to the fields of public activity (i.e. agriculture, economy or justice).

Below, we present, as the illustration of above-presented budgetary classifications principles, the extracts of budgetary classification of revenues and expenditures included in the Budget Act for 2014.

**Table n°1. Total revenues of State budget for 2014
(classification according to sources)**

Specification	Plan for 2014 (in thousands PLN)
TOTAL	277 782 224
1. Tax revenues	247 980 007
1.1. Indirect taxes	179 030 000
in this:	
a) Tax on goods and services	115 700 000
b) Excise duties	62 080 000
c) Tax on gaming	1 250 000
1.2. Corporate income tax (CIT)	23 250 000
1.3. Personal income tax (PIT)	43 700 000
1.4. Tonnage tax	7
1.5. Tax on mineral extraction	2 000 000
2. Non-tax revenues	28 148 107
2.1. Dividends	5 207 850
2.2. Customs duties	2 003 000
2.3. Fees, fines, interest and other non-tax revenue	18 431 276
2.4. Contributions of local government units	2 505 981
3. Funds from the European Union and other non-refundable sources	1 654 110

Source: Budget Act for 2014.

**Table n°2. Extract of budgetary revenues classification
(selected parts and divisions)**

Part	Division	Content	Plan for 2014 in thousands PLN
01	751	THE CHANCELLERY OF THE PRESIDENT OF THE REPUBLIC OF POLAND Offices of supreme state authorities, of control and protection of the law, and of the judiciary	1 170 1 170
02	751	THE CHANCELLERY OF THE SEJM Offices of supreme state authorities, of control and protection of the law, and of the judiciary.	1 276 1 276
15	755	COURTS OF COMMON LAW Justice	2 169 335 2 169 335
15/02	755	The Court of Appeal of Warsaw Justice	344 755 344 755
15/06	755	The Court of Appeal of Cracow Justice	201 901 201 901
24	750 801 854 921	CULTURE AND NATIONAL HERITAGE PROTECTION Public administration Education Educational care Culture and national heritage protection	5 500 4 518 172 721 89 4518
28	730 750 752	SCIENCE Science Public administration National defence	14 150 13 800 50 300

Source: Budget Act for 2014.

Table n°3. Extract of budgetary expenditures classification – “Communication” and “Computerisation” budgetary parts

Part	Division	Chapter	Content	No	Plan for 2014	In that:							
						Grants and subventions	Benefits for natural persons	Current expenditures of budgetary units	Property expenditures	Expenditures to service the State Treasury debt	Own funds of the European Union	Co-financing of the programmes with the participation of the EU funds	
26	600	60046 60052	COMMUNICATION Transport and communication Postal operators Tasks of telecommunication Public administration	1	23 598	2 155	18	19 813	783		829		
				2	3 875	2 155	1 100			620			
				3	2 155	2 155				620			
				4	1 720		1 100			209			
				5	18 644		17 634	783		209			
				6	18 644		17 634	783		209			
752	75212		Offices of supreme state authorities, of control and protection of the law, and of the judiciary National defence Other defence spending	7	1 079		1 079						
				8	1 079		1 079						
27	150	15012	COMPUTERISATION Manufacturing industry Polish Agency for Entrepreneurship Development Computers Other activity Public administration Offices of supreme state authorities, of control and protection of the law, and of the judiciary Authorities implementing the European programs Other activity	1	224 229		188	54 194	1 707		168 140		
				2	67 026						67 026		
				3	67 026								
				4	33 747		150	27 571	200			5 826	
				5	33 747		150	27 571	200			5 826	
				6	123 456		38	26 623	1 507			95 288	
				7	18 636		7	12 270	1 076			5 283	
				8	89 370		11	7 081	131			82 147	
				9	15 450		20	7 272	300			7 858	

Source: Budget Act for 2014.

4. Stabilising Spending Rule

In Poland, similarly as in the majority of the EU countries different types of fiscal rules that should enable the limitation of the level of public expenditures and in consequence the level of public deficit and debt are implemented. Therefore, these rules aims at the ensuring the public finances sustainability.

Currently binding in Poland fiscal rule, called **the stabilising spending rule** was introduced by the act amending PFA coming into force on the 1st January 2014¹⁵. Its introduction constituted an element of implementation of the Council Directive n°2011/85/EU of Nov. 8, 2011 on requirements for budgetary frameworks of the Member States (OJ of 23.11.2011, L 306, p. 41).

As Z. Szpringer explains: “the main goal of the stabilising spending rule is to reduce and stabilise the general government deficit, and consequently – the public debt. For this purpose, the expenditure resulting from the rule cover the general government expenditure with two exceptions. First, the calculation of the limit excludes budget spending of EU funds and that part of the expenditure which is financed by means of a non-refundable grant from the EU and EFTA countries. Secondly, the costs of units which do not have the ability to generate high deficits will be also excluded. Therefore, the rule covers about 90% of the expenditure of the general government sector. From the amount of spending determined this way we subtract the expected level of consolidated expenditures of local government units and their associations; units referred to in Article 139 of PFA and units of the National Health Fund. The rest of the amount will be a limit distributed within the rest of the sector. The limit is legally binding and aggregated. This means that the expenditure of some units covered by the limit (about 2/3 of government spending) will be able to grow faster at the

15 Ustawa z dnia 8 listopada 2013 r. o zmianie ustawy o finansach publicznych oraz niektórych innych ustaw [Act amending the Public Finance Act and other laws of Nov. 8, 2013] (Dz.U. 2013, item 1646).

expense of slower growth or decrease in expenditures of other entities subjected to the limit".¹⁶

The stabilising spending rule was expressed in the article 112aa of PFA by the following formula:

$$\mathbf{WYDn} = \mathbf{WYD*n-1} \times \mathbf{En(CPI)n} \times [\mathbf{WPKBn+Kn}] + \mathbf{En(\Delta DDn)},$$

where:

n – year for which the expenditure level is calculated;

CPI – consumer price index;

WYDn – the expenditure level specified in the Budget Bill for year n presented to Sejm;

WYD* n-1 – the expenditure level specified in the Budget Bill for year n-1 adjusted by the updated CPI forecasts;

En(CPI)n – forecast in the Budget Bill for year n of the consumer price index;

WPKBn – medium-term growth rate of gross domestic product (GDP) at constant prices specified in the Budget Bill for year n;

Kn – size of the expenditures correction determined in the Budget Bill for year n;

En(ΔDDn) – projected total value of discretionary actions concerning tax and social security contributions.

Without coming into details let's just mention that the article 112aa of PFA contains as well as the additional assumptions (expressed by mathematical formulas) detailing above presented equation that take into consideration i.e. data from eight years prior to the year n.

16 Z. Szpringer, Recent developments in public finances in Poland, www.ec.europa.eu, last accessed April 10, 2014.

5. State Budget Process

5.1. Constitutional Provisions

The budget process includes the preparation, the passing and the execution of the Budget Act. The Constitution of the Republic of Poland regulates in a fairly detailed way the competences and the procedural issues of the preparation and voting the state budget (see below), while the PFA provisions (articles 219–226) as well as the internal regulations of Sejm and Senate contain the provisions detailing these constitutional provisions.

Constitutional provisions regulating the budget process in Poland (articles 219–226)

Article 219

1. The Sejm shall adopt the State budget for a budget year by means of a Budget Act.
2. The principles of and procedure for preparation of a Budget Bill, the level of its detail and the requirements for a Budget Bill, as well as the principles and procedure for implementation of the Budget, shall be specified by statute.
3. In exceptional cases, the revenues and expenditures of the State for a period shorter than one year may be specified in an Interim Budget. The provisions relating to a Budget Bill shall apply, as appropriate, to an Interim Budget Bill.
4. If a State Budget or an Interim Budget have not come into force on the day of commencement of a budget year, the Council of Ministers shall manage State finances pursuant to the Budget Bill.

Article 220

1. The increase in spending or the reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided in the Budget Bill.

2. The Budget shall not provide for covering a budget deficit by way of contracting credit obligations to the State's central bank.

Article 221

The right to introduce legislation concerning a Budget, an Interim Budget, amendments to the Budget, a statute on the contracting of public debt, as well as a statute granting financial guarantees by the State, shall belong exclusively to the Council of Ministers.

Article 222

The Council of Ministers shall submit to the Sejm a Budget Bill for the next year no later than 3 months before the commencement of the budget year. In exceptional instances, the bill may be submitted later.

Article 223

The Senate may, within the 20 days following receipt of the Budget, adopt amendments thereto.

Article 224

1. The President of the Republic shall sign the Budget or Interim Budget submitted to him by the Marshal of the Sejm within 7 days of receipt thereof, and order its promulgation in the Journal of Laws of the Republic of Poland (pl. *Dziennik Ustaw*). The provisions of Article 122, para. 5 shall not apply to the Budget or any Interim Budget.
2. If the President of the Republic has made request to the Constitutional Court for an adjudication upon the conformity to the Constitution of the Budget or Interim Budget before signing it, the Constitutional Court shall adjudicate such matter no later than within a period of 2 months from the day of submission of such request to the Court.

Article 225

If, after 4 months from the day of submission of a Budget Bill to the Sejm, it has not been adopted or presented to the President of the

Republic for signature, the President of the Republic may, within the following of 14 days, order the shortening of the Sejm's term of office.

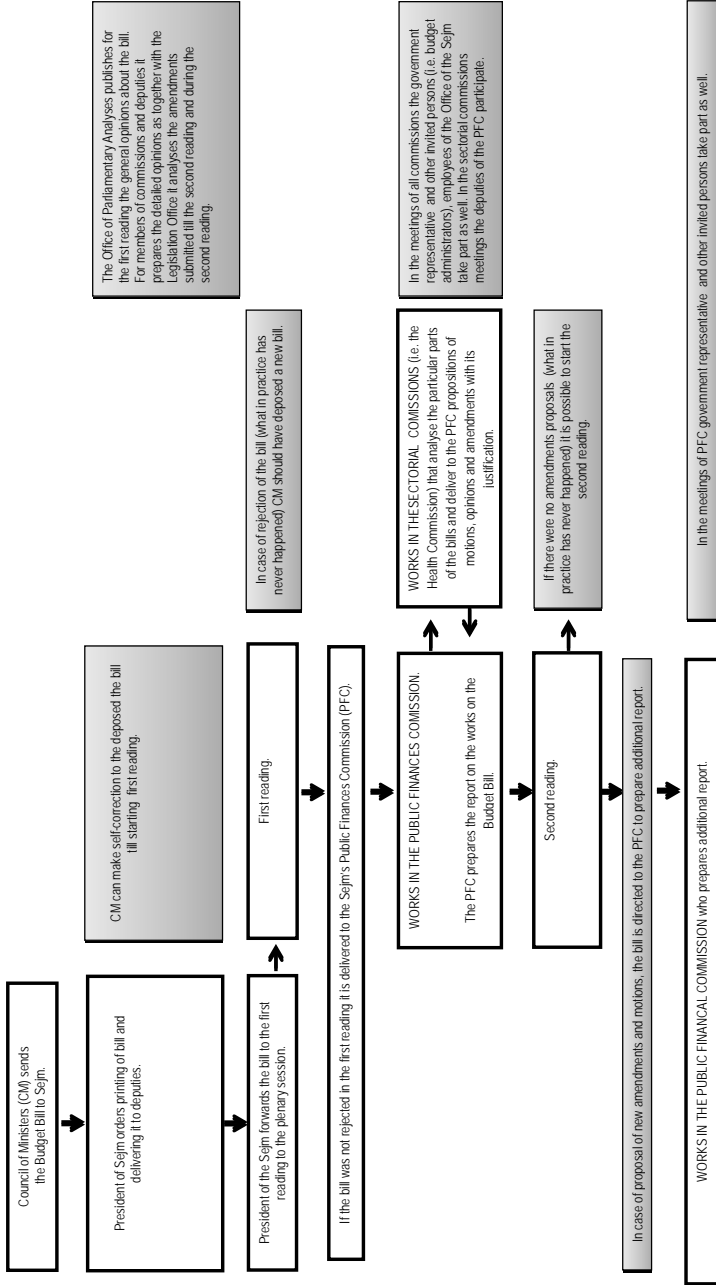
Article 226

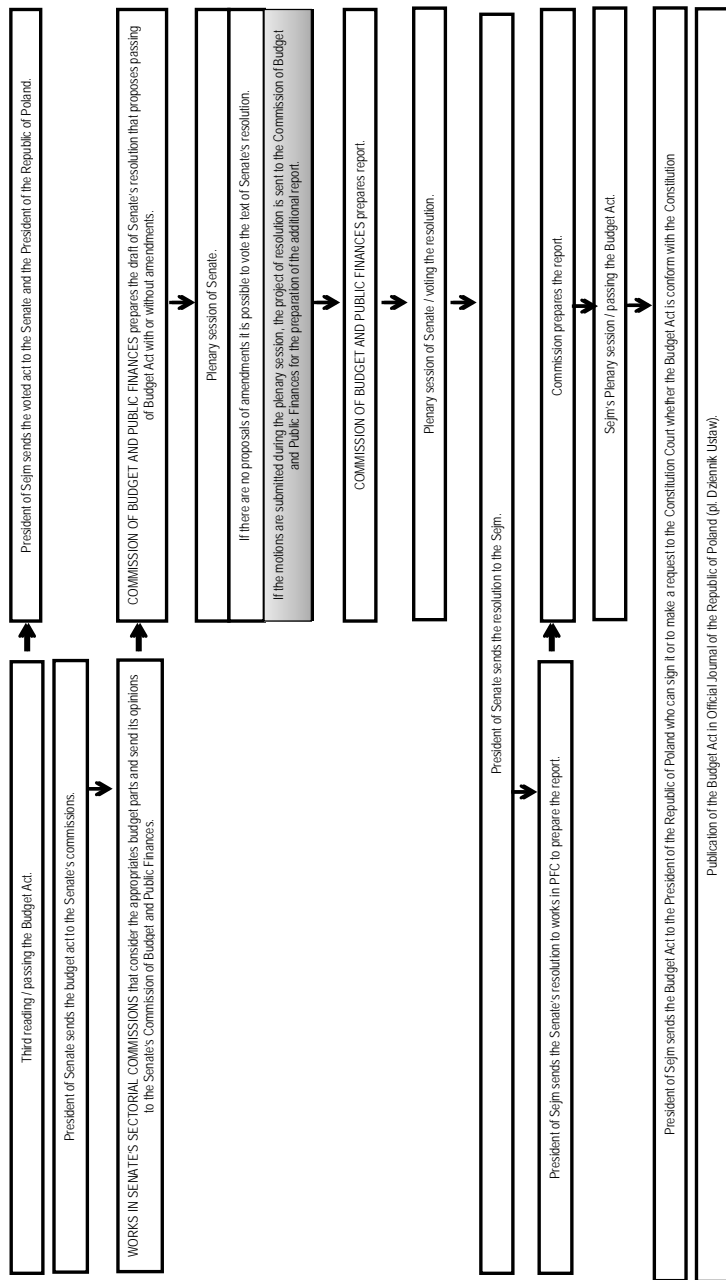
1. The Council of Ministers, within the 5-month period following the end of the budget year, shall present to the Sejm a report on the implementation of the Budget together with information on the condition of the State debt.
2. Within 90 days following receipt of the report, the Sejm shall consider the report presented to it, and, after seeking the opinion of the Supreme Audit Office, shall pass a resolution on whether to grant or refuse to grant approval of the financial accounts submitted by the Council of Ministers.

5.2. Mode of Preparing and Approving of State Budget

The Finance Minister submits to the Council of Ministers the basic assumptions to the Budget Bill for the subsequent year taking into consideration i.e. the assumptions adopted in the Multi- Year Financial Plan of the State (for more details see section 2.6.). Then, on the basis of materials presented by the administrators of particular budget parts, the Finance Minister submits to the Council of Ministers the Budget Bill for the subsequent years together with its justification (article 138 and 139 of PFA). Then the Budget Bill is transmitted to the works in the Parliament. Below we present the detailed scheme representing the process of works on the governmental Budget Bill in Sejm (the lower chamber of the Polish Parliament) and next in the Senate (the highest one) till its publication.

Scheme n°2. Process of works on the governmental Budget Bill in the Polish Parliament





Source: G. Gołębowski, *Polityka budżetowa [Budgetary policy], Studia Biura Analiz Sejm, No 3, 2010, at 34-35.*

5.3. Execution of Budget Act

The detailed principles of the Budget Act are established in the provisions of PFA. Below we present the most important of them.

Firstly, the Council of Ministers is in charge of state budget execution, while the particular budget parts are executed by its administrators. Within 21 days from publishing the Budget Act, administrators of budget parts provide:

- 1) to subordinate units – information about the amounts of revenues and expenditures (including remunerations) necessary to draw up financial plans so that they were conform with the Budget Act (article 146 of PFA),
- 2) to local government units – information about amounts of special-purpose grants, grants for tasks from the scope of government administration, tasks of inspectorate and guard, grants for the implementation of own tasks and also about amounts of revenues related to the implementation of tasks from the scope of government administration and other tasks commissioned under separate statutes to local government units, as specified in the Budget Act,
- 3) to provincial local governments – information about funds for the implementation of programmes financed with the participation of European funds for which management boards of provinces (pl. *województwo*) act as the managing authority or the intermediate body, as specified in the Budget Act (article 148 of PFA).

Secondly, during the execution of the Budget Act the following general principles of financial management article 162 of PFA) are applied:

- a) state budget revenues should be determined, collected and allotted on principles and within timeframes **resulting from enforceable provisions**;
- b) tasks should be fully implemented **within deadlines** specified by appropriate provisions and the state budget implementation

- schedule prepared by the Finance Minister in cooperation with budget parts administrators. Such a schedule is updated on request of the administrator of the budget part or the Finance Minister and covers a forecast of state budget revenues in particular months of the budget year, as well as the amount of expenditures earmarked for financing tasks in particular months of the budget year (article 147 of PFA);
- c) expenditures should be made up to the **amounts specified in the financial plan**, taking into consideration correctly made transfers and in accordance with the planned allocation thereof, in a deliberate and economical manner and in line with the principle of achieving the best results from available funds;
 - d) tasks should be **commissioned upon selecting the most advantageous proposal**, taking into consideration the provisions on public procurement and with respect to non-governmental organisations.

Thirdly, the PFA contains some provisions concerning the awarding grants from the state budget, i.e.:

- a) special-purpose grants for the implementation of tasks from the scope of government administration and other tasks commissioned under statutes shall be provided to the local government unit by the province governor within a timeframe enabling complete and timely implementation of these tasks. Special-purpose grants for the implementation of tasks from the scope of government administration and other tasks commissioned under statutes may also be provided, within timeframes specified in separate provisions, by the Head of the National Electoral Office or heads of teams or branches of the National Electoral Office acting on his behalf for the financing of tasks related to maintaining the electoral register as well as organising and carrying out elections and referendums as well by the heads of statistical offices for the financing of tasks related to organising general and agricultural censuses (article 149 of PFA);

- b) awarding a special-purpose grant, including awarding it to a public finance sector entity, whenever neither the mode nor the principles of awarding and settling this grant are specified in separate provisions or the international agreement, the administrator of the budget part or the administrator of the funds financed from the EU funds should conclude an agreement specifying the following in particular: a detailed description of the task, including the purpose for which the grant has been awarded and the deadline of the performance thereof, the amount of the awarded grant, the deadline by which the grant must be utilised (not longer than by 31 December of the relevant budget year), the deadline and the method of settling the awarded grant, the deadline for the reimbursement of the unutilised part of the grant, not longer than 15 days from the date task performance date specified in the agreement and in the case of a task performed abroad – 30 days from the performance date thereof specified in the agreement and the method of checking task performance (article 150 of PFA);
- c) the administrator of the budget part may commission a non-governmental organisation to perform its tasks under an agreement concluded with this organisation and at the same time award a special-purpose grant for the implementation thereof. Such an agreement should specify: the detailed description of the task, including the purpose for which the grant has been awarded and the deadline for the performance thereof, the amount of the awarded grant and the mode of payment thereof, the grant utilisation deadline, not longer than by 31 December of the relevant budget year, the mode of checking task performance and the deadline and the method of settling the awarded grant, the deadline for the reimbursement of the unutilised part of the grant(not longer than 15 days from the date task performance date specified in the agreement) and in the case of a task performed abroad – 30 days from the performance date thereof specified in the agreement (article 151 of PFA).

Fourthly, the provisions of PFA provide the possibility of creation the reserves in frame of the budget. At the phase of expenditure planning its destination is not determined and its allocation is decided at the phase of the budget execution.

There are two reserves types: **a general reserve and the special-purpose reserves**. A general reserve should not exceed 0,2% of budget expenditures. At the execution phase the decisions about the division of the general reserve are taken by the Council of Ministers who may authorise (by the regulation) the President of the Council of Ministers and the Finance Minister to administrate the general reserve up to specified amounts (article 155 of PFA).

On the other hand there are the special-purpose reserves that may be established in the state budget:

- a) for expenditures which may not be precisely divided into budget classification positions during the period of preparation of the Budget Bill;
- b) for expenditures whose implementation depends on incurring a loan at an international financial institution or obtaining funds from other sources;
- c) for expenditures related to the implementation of programmes co-financed with the participation of the EU or EFTA funds;
- d) whenever separate statutes provide for to this effect.

The sum of the special-purpose reserves referred to in the point (a) and (d) may not exceed 5% of budget expenditures, while there are no limits for two other types of special-purpose reserves (however its creation is conditioned on the prior request of a loan or EU or EFTA funds).

The special-purpose reserves are divided by the Finance Minister in cooperation with competent ministers or other administrators of budget parts (only in the case of division of the special-purpose reserve for increasing remunerations resulting from organisational changes and new tasks in state budgetary units exclusively the whole Council of

Ministers is competent) generally not later than by 15 October (article 154 of PFA).

Fifthly, the administrators of budget parts may **transfer expenditures** between chapters and paragraphs of the expenditures classification within the relevant part and division of the state budget (with the exception of expenditures for remunerations). The ministers administering more than one budget part may transfer expenditures between parts within one division and chapter of the state budget, but they have to notify immediately the Council of Ministers of any decisions made (the Council may overrule the minister's decision). Any transfer involving a reduction or an increase of expenditures earmarked for the implementation of programmes financed with the participation of European funds requires an approval of the minister competent for regional development. Any transfer involving a reduction or an increase of property expenditures by an amount in excess of PLN 100,000 on a one-off basis requires an approval of the Finance Minister. Additionally, administrators of budget parts are obliged to notify immediately the Finance Minister of any transfers of property expenditures involving amounts less than that. Moreover, in the case of expenditures on building investments, any transfer involving a reduction or an increase thereof requires an approval of the Finance Minister. Generally, administrators of budget parts may authorise heads of subordinate units to transfer expenditures within one chapter (article 171 of PFA).

Sixthly, during the budget execution the decision about **blocking planned in the Budget Act expenditures** can be made, it means a ban on administering a part or the whole of planned expenditures in force for a specific period or until the end of the year. Such a decision can be made in the following cases: mismanagement of funds in specific units, delays in the tasks implementation, excessive amount of funds owned and breaching the principles of financial management. The decision to block planned expenditures can be made by the Finance Minister (in the scope of the whole state budget, with the exception of the expenditures of the public authorities and institutions that have special budgetary position – enumerated in the article 139 (2) of PFA) or administrators of budget parts (in the scope of their part of the state

budget). Administrators of budget parts are obliged to immediately notify the Finance Minister of any decisions about expenditures blocking (article 177 of PFA).

Seventhly, the provisions of PFA determine the conditions of **reimbursement of state budget grants**. On the one hand, parts of **state budget grants which have not been utilised by the end of the budget year** generally should be reimbursed to the state budget by 31 January the following year. Parts of state budget grants awarded for the implementation of tasks abroad which have not been utilised by the end of the budget year shall be reimbursed to the state budget by 28 February of the subsequent year. In these both cases, when the grants are reimbursed after the deadline, the interest are charged on the amounts of grants (article 168 of PFA). On the other hand, **state budget grants utilised at variance with its allocation and grants unduly collected or collected in an excessive amount** should be reimbursed as well (within 15 days from the day on which the circumstances were found to exist) with interest that accrues starting on the day of transferring grants utilised at variance with the allocation thereof from the state budget or the day of ascertaining that the amount of a relevant grant was incorrectly assessed or that it was unduly awarded (article 169 of PFA).

Eighthly, **any unforeseen expenditures**, due for payment on account of writs of execution, court judgements or settlements, may be effected regardless of the balance of funds earmarked for this purpose. Appropriate amendments to the plan of expenditures shall be made by transferring expenditures from other items of the classification of expenditure or from special-purpose reserves. Moreover, **expenditures on servicing the State Treasury debt** should be made prior to other state budget expenditures. The Finance Minister may transfer expenditures planned for servicing the State Treasury debt between state budget parts where the service of the State Treasury foreign debt and the service of the State Treasury domestic debt are included (article 164 and 165 of PFA).

Ninthly, the provisions of PFA contain the exception from the principle of the gross budgeting method¹⁷. This exception concerns only state budgetary units with principal offices beyond the borders of the Republic of Poland and supervised by the minister competent for foreign affairs (i.e. embassies). They may collect in a separate bank account any revenues obtained from compensations and payments for any lost or damaged assets managed or utilised by the relevant budgetary unit, from proceeds from tenancy, lease or sales of assets or on account of interest on funds collected in the account. Next, these revenues should be destined for the financing of current and investment expenditures related to the renovation and reconstruction of assets of state budgetary units having their principal offices beyond the borders of the Republic of Poland. Expenditures may be made up to the amounts of the revenues collected, within the financial plan covering current revenues and funds carried forward from previous periods. Depending on the requirements reported by the minister competent for foreign affairs, these funds collected in the separate bank account may be transferred to a separate bank account of another budgetary unit having its principal office beyond the borders of the Republic of Poland subject to this minister (article 163 of PFA).

Finally, it should be mentioned that during the Budget Act execution **the Finance Minister exercises general control over the implementation of state budget** revenues and expenditures, incomes and expenses, the effectiveness and efficiency of implementing the performance budgeting, the utilisation of the funds from European Union, and the level of the public finance sector deficit as well (article 174 of PFA) On the other hand, **the administrators of particular budget parts exercise surveillance and control over financial management** as a whole of organisational units subordinate to them, including the preliminary assessment made by these units of the appropriateness of any expenditures made and the implementation of appropriate procedures, over the utilisation of grants awarded from the state budget, over the implementation of tasks financed from

17 Let's remember that public finances sector units financed with the gross method cover all its expenses directly from the state (or local government unit) budget and any gained incomes are directly transferred to this budget.

the state budget and finally over the effectiveness and efficiency of implementing performance-based plans on the basis of measures of objective implementation (article 175 of PFA).

6. Multiannual State Financial Plan

The multiannual State Financial Plan (pl. *Wieloletni Plan Finansowy Państwa*, WFPF) constitutes the major instrument of multi-year programming of public finances sector in Poland. It is elaborated for the budgetary year and three consecutive years. It constitutes the basis for elaboration of the Budget Bill for the following year. The draft of Multiannual State Financial Plan is presented by the Finance Minister to the Council of Minister who approves WFPF plan and publishes it in the Official Journal of the Republic of Poland “Monitor Polski” and in the Public Information Bulletin (article 106 of PFA). Each year, by the 15 April, the ministers are obliged to submit to the Finance Minister the information about the implementation of the WFPF plan (article 108 of PFA).

Regarding the content of WFPF plan, it has evaluated from its introduction to the Polish legal system in 2010. The first four plans (i.e. for the following periods: 2010–2013, 2011–2014, 2012–2015, 2013–2016¹⁸) have specified the objectives of the socio-economic policy and the fiscal one, the forecasts of public debt, the basic data on the state budget. Additionally, these plans had also contained the attachment where every function (the highest level of functional expenditures classification) of annual performance budget was described in multiannual perspective (i.e. description of function, its objectives and indicators, the values of indicators planned separately for every of four years of programming, as well planned expenditures for the next year and together for the last three years of programming).

Currently binding WFPF plan for the period 2014–2017, approved by the Council of Ministers in April 2014, consists of the Convergence

18 Interestingly, the provisions of PFA prior to its amendment that came into force on 1 January 2014 obliged the government to the annual updating of the WFPF to adapt its content to the Budget Act calling into question the idea of multiannual financial planning.

Programme (presented annually to the European Commission) and a really synthetic description of the objectives of the main functions of the state together with indicators of its realisation (generally only the value achieved at the beginning of 2014 and the value planned for 2017 are presented).¹⁹

19 U.K. Zawadzka-Pąk, Performance budgeting and the multiannual programming of public finances, „Białostockie Studia Prawnicze” 2014, vol. 16, p. 60.

BUDGET OF LOCAL GOVERNMENT UNITS

1. Basic Definitions

According to the article 211 of PFA **the local government unit's budget** is an annual plan of revenues and expenditures as well as incomes and expenses, passed for a budget year (calendar year) in the form of the Budget Resolution that constitutes the basis of financial management of the local government unit.

From the formal point, the Budget Resolution comprises the part composing of the paragraphs (i.e. general limits of revenues, expenditures, liabilities or guarantees) **and the annexes that** detail the general provisions of the first part of Budget Resolution (the paragraph one). **From the point of its content, the Budget Resolution includes the budget (this financial plan) and the other provisions specified by the PFA.** Therefore, the Budget Resolution is a form of budget presentation. The Budget Resolution defines:

- a) the aggregate amount of planned revenues of the local government unit's budget, with current and property revenues declared separately,
- b) the aggregate amount of planned expenditures from the local government unit's budget, with current and property expenditures declared separately,
- c) the amount of planned deficit or planned surplus of the local government unit's budget together with the sources of covering the deficit or allocation of the surplus;

- d) the aggregate amount of planned incomes of the local government unit's budget;
- e) the aggregate amount of planned expenses of the local government unit's budget;
- f) the limit on liabilities on account of incurred bank and non-bank loans and also any securities issued;
- g) the amount of expenditures due for repayment in the course of the relevant budget year in accordance with the agreement, on account of sureties and guarantees granted by the local government unit;
- h) specific principles of executing the local government unit's budget in the relevant budget year following from separate statutes;
- i) the powers of the subsidiary unit to be in charge of financial management within the commune's budget;
- j) other provisions due to be included in the Budget Resolution pursuant to the provisions of the decision-making authority of the local government unit (article 212 of PFA).

The provisions of PFA prohibit to put in the Budget Resolution the provisions that are not related with the execution of the budget of the local government unit (article 213 of PFA).

The PFA include the definitions of deficit and surplus of the local government unit. The difference between revenues and expenditures of the local government unit's budget constitutes respectively **surplus** of the local government unit's budget or **deficit** of the local government unit's budget. Let's note that the incomes and the expenses are not taken into account to calculate the outturn. Instead a deficit may be financed with incomes coming from the sales of securities issued by the local government unit, bank and non-bank loans, privatisation of assets of the local government unit, budget surplus of the local government unit from previous years, free funds as the surplus of funds in the current account of the local government unit resulting from settlements of the securities issued, bank and non-bank loans from previous years (article 217 of PFA).

2. Local Budget Revenues and Expenditures

According to the article 235 of PFA, the budgetary classification of revenues consists of divisions, however additionally the provisions of this article provide that the decision-making authority of the local government unit may decide that the plan of budget revenues was prepared in a more detailed manner (in practice these resolutions provide the full classification of divisions, chapters and paragraphs). Additionally, the revenues plan should be composed of two sections: current revenues and property ones divided to the sources thereof. The **current revenues** of the local government unit are defined as budget revenues which are not property revenues, while among the property revenues were classified grants and funds earmarked for investments, revenues from the sales of assets, revenues on account of transforming the right of perpetual usufruct into the right of ownership.

In turn, according to the article 236 of PFA, the local budgetary classification of expenditures consists of divisions and chapters (let us remind that the parts are reserved only for the state budget). Additionally, this article provides as well that the decision-making authority of the local government unit may decide that the plan of expenditures was prepared in a more detailed manner. In practice, the expenditures are classified by paragraphs as well. The article 236 of PFA introduces the obligation of division the expenditures into two sections (as in the case of the revenues): the current expenditures and the property ones. The current expenditures are defined as budget expenditures which do not constitute the property expenditures. **The property expenditures** include expenditures on investments and investment purchases, also on programmes financed with the participation of the UE and EFTA funds, the purchase and taking hold of shares in private or public companies, making contributions to commercial law companies. **The current expenditures** are defined as budget expenditures which are not property expenditures and include in particular expenditures of budgetary units (including remunerations and contributions charged thereon, expenditures related to the implementation of their statutory tasks), grants for current tasks, benefits for natural persons, expenditures on programmes financed with the participation of the

UE and EFTA funds, payments disbursed on account of sureties and guaranties granted by the local government unit due and payable in the course of the relevant budget year, servicing the debt of the local government unit.

The main reason of the introduction of the division into two budget's sections was the legislator's desire of balancing the budget current section in the name of principle of the solidarity between generations – the local government units may borrow only for investments that will be used by the current and the future generations that at the same time will pay off the funds (the local debt) that were used to finance these investments. **The principle of balanced section of the current budget** was expressed in the article 242 of PFA. The decision-making authority of the local government unit may not pass a budget where planned current expenditures exceed planned revenues augmented by the budget surplus from previous years and the free funds. Also at the end of the budget years, the current expenditures incurred in general may not exceed the current revenues received augmented by the budget surplus from previous years and the free funds.

3. Individual Debt Ratio

The individual debt ratio, next to the principle of balanced section of current budget, constitutes the other restriction of indebtedness of local government units. **The individual debt ratio** provided by the provisions of PFA is calculated on the basis of the financial situation of particular local government unit. According to the article 243 of PFA:

1. The decision-making authority of the local government unit may not pass a budget, the execution of which will cause in the budget year and in each year following the budget year that the ratio of the aggregate amount due and payable in the relevant budget year of:

1) repayment of the bank and non-bank loans referred to in the article 89 (1) (2–4)¹ and the article 90² along with the interest on these bank and non-bank loans referred to in the article 89 and the article 90 due and payable in the relevant year,

2) the buyback of securities issued for the purposes specified in the article 89 (1) (2–4) and article 89 along with interest due and the discount on the securities issued for the purposes specified in the article 89 (1) and in the article 90,

3) repayment of amounts resulting from granted sureties and guarantees, if applicable

– to planned budget revenues in total exceeds the arithmetic mean from the ratio of its current revenues augmented by revenues from the sales of assets and reduced by current expenditures computed for the previous three years to budget revenues in total, with the said mean computed by the following formula:

$$\left(\frac{R+O}{D}\right)_n \leq \frac{1}{3} * \left(\frac{Db_{n-1} + Sm_{n-1} - Wb_{n-1}}{D_{n-1}} + \frac{Db_{n-2} + Sm_{n-2} - Wb_{n-2}}{D_{n-2}} + \frac{Db_{n-3} + Sm_{n-3} - Wb_{n-3}}{D_{n-3}} \right)$$

where individual symbols mean:

R – the aggregate amount on account of repayment of the bank and non-bank loans referred to in the article 89 (1) (2–4) and the article 90 and buybacks of securities issued for the purposes specified in the article 89 (1) (2–4) and the article 90 planned for the budget year,

-
- 1 According to provisions of article 89 of PFA: 1. Local government units may incur bank and non-bank loans and issue securities in order to: a) cover a temporary deficit which may occur in the local government unit's budget throughout the year; b) finance the planned budget deficit of the local government unit; c) repay earlier liabilities on account of an issue of securities and any non-bank and bank loans which have been incurred; d) ensure pre-emptive financing for activities financed from funds coming from the European Union budget. 2. Any bank and non-bank loans which have been incurred and any securities issued for the purpose referred to in Section 1 (1) shall be repaid or bought back in the course of the same year in which they were incurred or issued.
 - 2 According to the article 90 of PFA: local government units may incur loans in state special-purpose funds in order to finance expenditures on investment and investment purchases declared within the multiannual programs prescribed in the Multiannual Financial Forecast as long as the statute establishing the fund provides for to this effect.

- O* – interest on the bank and non-bank loans referred to in the article 89 (1) and the article 90, interest and discount on securities issued for the purposes specified in the article 89 (1) and the article 90 and also repayment of amounts resulting from granted sureties and guaranties planned for the budget year,
- D* – budget revenues in total in the relevant budget year,
- Db* – current revenues,
- Sm* – revenues from the sales of assets,
- Wb* – current expenditures,
- n* – the budget year for which the ratio is determined,
- n-1* – the year preceding the budget year for which the ratio is determined,
- n-2* – the year preceding the budget year by two years,
- n-3* – the year preceding the budget year by three years.³

The local government units calculate the individual debt ratio since the provisions of PFA came into force (1 January 2010) and put it in their Multiannual Financial Forecast (pl. *Wieloletnia Prognoza Finansowa*, WPF⁴) as the provisions of article 226 of PFA stipulate, however till 31 December 2013 these calculations had only the informative value (had not prevented passing the budget exceeding the individual debt ratio). It results from the fact that the legislator determined long *vacatio legis* period for article 243 of PFA (its provisions came into force on 1 January 2014) in order to give to the local government units the necessary time to prevent in advance the possible difficulties in fulfilment of the ratio. This legislator's will results i.e. from the fact that the ratio is calculated on the basis of three previous years, so it was necessary to give to local government units enough time to adapt their financial situation to the requirements of individual debt ratio. However, still the situation of some local governments units has not enable them to respect it. In consequence, after the entrance into force the PFA provisions the representatives of financial law doctrine arise the questions concerning

3 The provisions of the article 243 of PFA provide some exceptions of sources of liabilities that are not taken into consideration when the ratio is calculated.

4 For more details on WPF forecast see section 3.5.)

the situation in which a local government unit was not able to pass the budget not exceeding the ratio. In such a situation, the new article was added to PFA (240a)⁵. It stipulates that in the situation when a local government unit is not able to prepare the budget and the WPF forecast respecting the individual debt ratio (and/or the principle of balanced section of the current budget) when there is a danger of realisation of public tasks by the local government unit, the Regional Chamber of Auditors' Board calls the local government unit to the preparation and the adoption of the three years remedial program⁶. Such a program should be approved by the Regional Chamber of Auditors, within 45 days from the call to its preparation. If the Chamber approves the remedial program the budget can be passed without respecting both the principle of balanced section of the current budget and the individual ratio debt. However, when the local government unit did not prepare the remedial program or the Regional Chamber of Auditors did not accept to approve the prepared remedial program, the budget of local government unit is determined by the Regional Chamber of Auditors.

4. Local Budget Process

4.1. Mode of Preparing and Approving the Local Budget

The **excluding initiative** on drawing up the draft of the Budget Resolution, the Interim Budget⁷ Resolution, Resolution amending the

5 The article 240a was introduced by ustawa z dnia 8 listopada 2013 r. o zmianie ustawy o finansach publicznych oraz niektórych innych ustaw [Act amending the public finance act and certain others acts of Nov. 8, 2014] (Dz.U. item 1646) that came into force from Jan. 1, 2014.

6 During the implementation of the remedial program local government unit: cannot make new investments financed by credit, loans or issuance of securities, cannot provide financial help to other local government unit, cannot provide sureties, guarantees and loans, cannot incur the expenditures for the promotion of unit, cannot form the special auxiliary unit (pl. *fudzusz sołeczki*), restricts the execution of other tasks than the mandatory ones financed from their own funds.

7 The **Interim Budget** constitutes a temporary alternative to the Budget Bill being in force for the period shorter than one year (in the Polish practice it covers usually three months). The Interim Budget can be adopted at the central level and the local one as well. However, the local government unit can adopt the Interim Budget only when the Council of Ministers has voted the Interim Budget Bill (article 241 of PFA). Passing the Interim budget does not exempt from voting the Budget Act (the Budget Resolution). An Interim Budget ceases to be binding with the coming into force the budget bill. In practice, the institution of Interim Budget is rarely used.

Budget Resolution falls into the authorities of the management board of the local government unit⁸ (article 233 of PFA).

The decision-making authority of local government unit passes the Resolution on the mode of work on the Draft Budget Resolution that constitutes the basis for the preparation of Budget Draft Resolution. This Resolution specifies in particular: the required details of the budget draft of the local government unit, the deadlines binding during the work on the Draft Budget Resolution, the requirements concerning the grounds and information materials which the management board will submit to the decision-making authority with the Draft Budget Resolution (article 234 of PFA).

The management board of the local government unit by 15 November of the year preceding the relevant budget year should submit the Draft Budget Resolution to **the Regional Chamber of Auditors (for an opinion)**⁹ and to the decision-making authority of the local government unit (for passing). Having obtained the RIO's opinion on the Draft Budget Resolution, the local government unit is obliged to submit the opinion of the Regional Chamber of Auditors to the decision-making authority before the budget is approved (article 238 of PFA). Without an approval of the management board of the local government unit, **the decision-making authority may not make any amendments** to the Draft Budget Resolution resulting in a reduction of revenues or an increase of expenditures and at the same time in an increase of the budget deficit of the local government unit. The decision-making authority should pass the Budget Resolution before the beginning of the budget year and not later than by 31 January of the budget year in specifically justified cases. By the time of passing the Budget Resolution the financial management is based on the Draft

8 The administrative structure of Poland composes of three levels: community (pl. *gmina*), district (pl. *powiat*) and region (pl. *województwo*). In communities, the executive power is executed by mayor or president (depending on the number of community habitants) elected in the direct voting by citizens, in districts and regions the executives competences are realised by the local government unit's Board composing of several persons elected by the decision-making authority.

9 On the basis of the Draft Budget Resolution, the Regional Chamber of Auditors submits as well the opinion on the possibility of financing the deficit proposed by the local government unit. The local government unit is obliged to publish this opinion within 7 days from the day on which it was received from the Regional Chamber of Auditors (article 246 of PFA).

Budget Resolution submitted to the decision-making authority. In the event the Budget Resolution is not passed by this deadline, the Regional Chamber of Auditors establishes the budget of the local government unit in the scope of own tasks and commissioned tasks by the end of February of the relevant budget year. Financial management is based on the Draft Resolution until the budget is established by the Regional Chamber of Auditors. The establishment of the budget the Regional Chamber of Auditors does not exempt the decision-making authority to pass the Budget Resolution (articles 239–240 of PFA).

4.2. Execution of Local Government Unit’s Budget Resolution

The provisions of PFA detail presented-below principles of local government unit’s budget execution.

Firstly, the local government unit’s **budget is executed by the management board** thereof. The management board exercises as well the general supervision over the implementation of revenues and expenditures, incomes and expenses of the local government unit’s budget specified in the Budget Resolution (article 247 of PFA). On the basis of the local government unit’s **the subordinated units of local government units as well the local government unit’s office itself prepare their financial plans** for the budgetary year that constitute the instruments of the execution of its parts of budget local government units. Within 7 days from the day of providing the Draft Budget Resolution to the decision-making authority, the management board provides subordinated units with information required for drawing up drafts of the financial plans thereof (i.e. schools, social welfare centres, libraries). These units draw up drafts of their financial plans within 30 days from the day on which they received the information, however not later than on 22 December (article 248 of PFA). Subsequently, within 21 days from the day of passing the Budget Resolution, the management board provides subordinated units with information about the final amounts of revenues and expenditures of these units and also about the amount of grants and transfers to the budget in order to enable to these units the adjusting their draft plans to the Budget

Resolution. In the financial plans of subordinated units should be declared all its revenues and expenditures while in the financial plan of the local government unit's office should be declared all budget revenues and budget expenditures not declared in financial plans of other budgetary units, including expenditures related to the functioning of the decision-making authority and the management board, grants for local government budgetary entities, grants and funds provided to other local government units and unions of local government units, other grants, transfers to the state budget allocated to increase the part of the general subvention (so-called "Janosikowe"¹⁰), payments and contributions paid to domestic and foreign institutions (article 249 of PFA).

Secondly, the provisions of PFA determine the **general principles of financial management** binding during the execution of the local government unit's budget:

- 1) budget revenues of the local government unit should be determined, collected and transferred on the principles and within timeframes resulting from **enforceable provisions**;
- 2) tasks should be fully implemented **within the deadlines** specified in the legal provisions and in the schedule of the execution of the local budget prepared by the management board;
- 3) expenditures should be incurred within the **amounts specified in the financial plan**, taking into consideration transfers made in a correct manner and in accordance with the allocation planned, in a deliberate and economical manner and achieving the best possible results from the outlays incurred;
- 4) tasks should **be commissioned upon selecting the most advantageous proposal**, taking into consideration the provisions on public procurement and with respect of rights

10 The "Janosikowe" system is regulated in ustawa z 13 listopada 2003 r. o dochodach jednostek samorządu terytorialnego [Local government units revenues Act of Nov. 13, 2003] (Dz.U. 2003, vol. 203, item 1966, with amendments). It has introduced the obligation for the richest local government's units to pay to the state budget the determined some of their revenues that subsequently are distributed to the poorest local government units. The name of "Janosikowe" comes from the name of Juraj Jánošík (1688–1713), an epic figure of Slovak and Polish culture. He was a defender of the poorest similarly as Robin Hood.

of non-governmental organisations to the realisation of public tasks (article 254 of PFA).

Thirdly, **any unutilised amounts of expenditures** of the local government unit's budget in principle **expire** at the end of the budget year. In order to enable executing the expenditures in the following year, the decision-making authority must define, by resolution, a list of non-expiring expenditures and determine the final deadline for effecting each expenditure declared in this list in the subsequent budget year. The final deadline for effecting expenditures which did not expire at the end of the budget year passes on 30 June of the subsequent year. Together with the list of non-expiring expenditures, the decision-making authority should establish the financial plan of these expenditures divided into divisions and chapters of expenditure classification, with property expenditures declared separately. Funds for the expenditures declared in the list of non-expiring expenditures should be collected in a separate sub-account of the principal bank account of the local government unit. Any funds unutilised by the deadline specified by the decision-making authority should be allocated to budget revenues of the local government unit within 7 days from the day specified by the decision-making authority (art. 263 of PFA).

Fourthly, the provisions of PFA provide **the obligation of reimbursement of grants** awarded from the local government unit's budget in two situations. The first one results from the legal activity of the grantee of non-use of awarded grants till the end one, the second one results from illegal activities described below. **In the first case, parts of grants awarded from the local government unit's budget and unutilised¹¹ by the end of the budget** year should be returned to the local budget by 31 January of the subsequent year. If the decision-making authority decides by the resolution about the prolongation of deadline of expiring of awarded grants (this possibility results from the article 263 of PFA described above), the unutilised part of the grant

11 Provisions of PFA specify that utilisation of grants should be effected by payments for implemented tasks for which the relevant grant was awarded or, where the method of awarding and settling the relevant grant are specified by separate provisions, the grant is utilised by implementing the objectives specified therein.

should be reimbursed to the local government unit's budget within 15 days from the day specified in this resolution. Interest will be charged on the amounts of grants returned after the above-specified deadlines in the amount determined as for tax arrears, beginning from the day following the expiry of the reimbursement deadlines. **The second situation of obligation of returning awarded grants took place when the grants awarded from the local government unit's budget were utilised at variance to the allocation thereof or were collected when not due or in an excessive amount.** Grants collected in an excessive amount are the grants received from the local government unit's budget in an amount exceeding the amount specified in separate provisions, the agreement or required for the co-financing or financing of the subsidised task. Grants not due are grants awarded without the legal basis. Only parts of grants utilised at variance with the allocation thereof, awarded when not due or collected in an excessive amount should be reimbursed to the local government unit's budget. In such the cases they should be reimbursed to the budget together with interest in the amount determined as for tax arrears within 15 days from the day of finding the mentioned above circumstances. In the event the utilisation deadline of the grants is shorter than the budget year, the grants should be reimbursed within 15 days after the grant utilisation deadline expired. Interest on grants to be reimbursed to the local government unit's budget increase from the day of providing grants utilised at variance with the allocation thereof from the local government unit's budget and the day following the expiry of the reimbursement deadlines with regard to grants collected when not due or in an excessive amount.

Fifthly, similarly to the state budget, in the local government unit's budget the reserves are created. A **general reserve** should be established in the amount not lower than 0,1% and not higher than 1% of budget expenditures. The second type of reserves, **special-purpose reserves** may be established in the local government unit's budget:

- a) for expenditures which may not be precisely divided into budget classification positions during the period of preparing the budget of the local government unit;

- b) for expenditures related to the implementation of programmes co-financed with the participation of the UE and EFTA funds,
- c) whenever separate statutes provide for to this effect.

The sum of the special-purpose reserves referred to in the points a) and d) may not exceed 5% of expenditures from the local government unit's budget, while there is limit of the special-purpose reserves for the implementation of programmes co-financed with the participation of the UE and EFTA funds.

At the execution phase the general reserve and the special-purpose ones are **divided by the management board** of the local government unit (article 222 of PFA). Expenditures transferred from the general reserve may not exceed planned expenditures on benefits and remunerations under employment relationship, unless separate provisions provide for otherwise. The special-purpose reserves may be earmarked exclusively for the purpose for which they were established and utilised in accordance with the budget classification of expenditures. However, having obtained a favourable opinion of the commission competent for budget of the decision-making authority, the management board may make amendments to the allocation of the special-purpose reserve (article 259 of PFA).

Sixthly, **any unforeseen expenditures**, due for payment on account of writs of execution, court judgements or settlements, may be effected regardless of the balance of funds earmarked for this purpose. Appropriate amendments to the expenditures plan should be made by transferring expenditures from other items of the classification of expenditure or from special-purpose reserves (article 256 of PFA).

Seventhly, in the course of budget execution **the management board may make amendments** to the revenues and expenditures plan of the local government unit's budget consisting in amending the plan of:

- 1) revenues and expenditures related to amending amounts or obtaining grants transferred from the state budget, budgets of other local government units and other public finance sector entities;

- 2) revenues of the local government unit resulting from amending the amounts of subventions as a result of dividing the reserves of the general subvention;
- 3) expenditures of the local government unit within the division with respect to current expenditures, except for amendments to the plan of expenditures for benefits and remunerations under employment relationship;
- 4) revenues and expenditure of the local government unit related to the reimbursement of grants received from the state budget or other local government units (article 257 of PFA).

The decision-making authority may authorise the management board to make other amendments in the plan of expenditures (except for transfers of expenditures between divisions). **The decision-making authority can as well:** delegate certain powers to transfer planned expenditures to other organisational units of the local government unit, delegate powers to other organisational units of the local government unit to incur liabilities on account of agreements of which performance in the relevant budget year and subsequent years is required in order to ensure continuity of operation of the given unit and payments from which exceed the budget year as well (article 258 of PFA).

Finally, the local government unit's budget are **serviced by the bank** selected on the principles specified in the provisions on public procurement. The principles of banking service should be specified in the agreement concluded by the management board of the local government unit and the selected bank. However, the decision-making authority may authorise the management board to deposit free funds in accounts in other banks. The management board may incur loans in banks it selects in the mode specified in the provisions on public procurement to the extent of powers contained in the Budget Resolution (art. 264 of PFA).

5. Local Government Multiannual Financial Forecast

Local Government Multiannual Financial Forecast (pl. *Wieloletnia Prognoza Finansowa, WPF*) constitutes the basic, obligatory instrument of multiannual financial programming of local government units in Poland. The WPF forecast covers the period of the relevant budget year and at least three subsequent years. However, the debt forecast, which constitutes a part of WPF should be drawn up for the period for which liabilities have been incurred or are planned to be incurred. In consequence, WPF forecasts are prepared for the periods much longer than 4 years (e.g. the current the WPF forecast of Cracow covers the period 2014–2040, the WPF forecast of Białystok – 2014–2036, in the case of smaller towns (and in consequence less in debt) the period of validity is of about 15 years).

An initiative on drawing up the Draft Resolution on the Multiannual Financial Forecast and any amendments thereto falls exclusively into the management board of the local government unit. The management board of the local government unit submits the Draft Resolution on the WPF forecast or any amendments thereto along with the Budget Bill to the Regional Chamber of Auditors for an opinion and to the decision-making authority of the local government unit for passing the resolution (article 230 of PFA).

For each year covered by the WPF forecast should specify the following at least:

- a) the current revenues and the current expenditures of the local government unit's budget, also for servicing debt, guarantees and sureties,
- b) the property revenues, including the revenues from the sales of assets, and the property expenditures from the local government unit's budget,
- c) the outturn (deficit or surplus) of the local government unit's budget,
- d) the allocation of the surplus or the means to finance the deficit,

- e) the incomes and the expenses of the local government unit's budget, taking into consideration the debt which has already been incurred and which is planned to be incurred,
- f) the amount of debt of the local government unit and the method of financing the repayment of debt,
- g) the amounts of current and property revenues resulting from expenditures limits for the planned and realised multiannual programs,
- h) the explanations of any values adopted.

Additionally, in the annex presented with the WPF forecast the overview of **multiannual programs** (in most of the cases the property ones) is presented. The multiannual programs include i.e. public-partnership agreements and programmes, projects or tasks, including those related to programmes financed with the participation of the European Union funds. For each of them are separately specified the name and purpose thereof, the organisational unit responsible for implementation thereof or coordinating the execution thereof, the implementation timeframe and total financial outlays, the expenditure limits in individual years and the limit on liabilities as well (article 226 of PFA).

According to the article 229 of PFA **the values adopted in the WPF forecasts and in the local government unit's budget should conform at least in terms of the outturn (deficit or surplus) of budget as well as incomes and expenses related thereto and also the debt of the local government unit.** It implies in practice the obligation of modification of WPF forecast every year, and in extreme situations even several times a year. Such a solution call into question the reasonableness of multiannual programming in the Polish local government units that should indicate the general (strategic) framework of local government unit rather than detailed amounts conform with annual budget.

PERFORMANCE BUDGET

1. Essence of Performance Budget

The performance budget is currently used in more than fifty countries around the world and the solutions adopted in different countries influence one to each other. The concept of the performance budget is therefore constantly evolving, also as a result of its adoption to the needs of particular. The development of this institution causes that what until recently was considered as a complete concept of performance budget, now is recognised as only one of its elements. These transformations imply the need explanation of the performance budget terminology. As M. Postuła and P. Perczyński¹ justly notice “a multitude of countries and variants of performance budgets in Europe and in the world causes terminological ambiguity and sometimes a definitional chaos”. Obviously, the institution of the performance budget was created in different countries in more or less different way. A more serious problem consists of the fact that in Poland (so therefore within the same legal system) this terminology is still being developed and the concept itself has not been yet precisely defined in Polish literature.

In Poland to describe the conception of performance budget (called in Polish *budżet zadaniowy*) it was decided to stress the aspect of “tasks”

1 M. Postuła, P. Perczyński, Budżet zadaniowy – wprowadzenie; znaczenie wieloletniego planowania strategicznego w procesie budżetowania [Performance budgeting – introduction. Significance of multiannual strategic planning in the budgeting process] in: M. Postuła, P. Perczyński (eds.), Budżet zadaniowy w administracji publicznej [Performance budgeting in public administration], Warszawa 2010, p. 24.

(not programs) and not the results (performance) as in the original English terminology. This choice is often criticised because not only formally (from the terminological point of view) but also essentially structure of tasks is more important than its results (performance).

The terminological difficulties results from tree main reasons. Firstly, the concept of the performance budget has been developed in the Anglo-Saxon countries, so its terminology originally was created in English and some of its elements still do not have the Polish (commonly accepted) equivalents. Secondly, some crucial notions (and also the relations between them) that are used in Poland have not been clearly defined (are often used alternatively). Thirdly, there is no distinction of the legal and economic approach of the task budget which seems necessary because of the lack of coherence between commonly understood definition of task budget with the definition of the budget itself developed for many years by the doctrine.

The explanation of the term “performance budget” in such a way that the adopted definition was consistent with the opinions of the doctrine and with its common understanding, first it is necessary to distinguish between the institutions of the budget in a legal and economic terms (see chapter 2.1.).

Taking into account the features that distinguish the traditional budget from the task (performance) one – among which the most important is the functional classification of expenditures and its objectives and indicators – it can be concluded that **the performance budget in legal terms** is the financial and substantive plan that authorises to collect therevenue and to make the expenditure in the form of Budget Act, where the expenditures are planned and carried out in the structure of tasks (programs), therefore, classified according to functional expenditures classification, to which objectives and indicators are assigned.

On the other hand, if the state budget is analysed **as an economic category**, there is no objections to treat the **performance budget** as an annual financial and material plan where the expenditures are classified according to task structure (based on the functional classification and the system of objectives and indicators used to measure the obtained

results). The detailed allocation of these resources can be made in a number of complementary (generally consistent) financial and substantial plans. A. Schick² confirms that the performance budget “can be broadly defined as any budget that presents information on what agencies have done or expect to do with the money provided. In this case it can simply refer to performance information presented as part of the budget documentation or to a budget classification in which appropriations are divided by groups of outputs or outcomes”. Also T. Lubińska³ presents the similar opinion and explains that it is difficult to identify the concept of the state budget as presented in its (legal) definition with the performance budget. Indeed, it should strictly refer to the expenditure of the state budget that are allocated to public task. Similarly, the performance budget is defined by W. Misiąg⁴ as the financial and substantial plan where the action plan is presented in the form of a set of tasks, for each of them are defined: the entity responsible for the execution of the task, the deadline of its execution (for tasks that have the character of projects), indicators of realisation of each task and the cost allocated for them”.

Referring to the above definitions of the performance budget (in legal and in economic terms) it should be noted that **in Poland, in the current legal system, only the traditional budget (and not the performance one) has the authorising character to collect revenues and to make the expenditures** (see article 116 (2) of PFA).

Currently binding legal provisions do not contain an unambiguous explanation of performance budget. The article 2 (3) of PFA contains only the definition of task structure (pl. *układ zadaniowy*) that means “a plan of respectively state budget expenditures or costs of a public finance sector unit drawn up in accordance with state functions

2 OECD, Modernising Government. The way forward, Paris 2005, p. 59.

3 T. Lubińska, Budżet państwa i budżet zadaniowy w kontekście zasad budżetowych [State budget and performance budgeting in the context of the budgetary principles] in: B. Woźniak, M. Postuła (eds.), Budżet zadaniowy metodą racjonalizacji wydatków [Performance budgeting as a method of expenditures rationalisation], Warszawa 2012, p. 25.

4 W. Misiąg, Zasady konstrukcji budżetu zadaniowego polityki społecznej [Principles of construction of performance budgeting of social policy] in: W. Misiąg, A. Hryniewicka, Koncepcja i wskaźniki budżetu zadaniowego a bilans potrzeb pomocy społecznej [Conception and indicators of performance budgeting and the recapitulation of social security needs]. www.irss.pl, last accessed Feb. 4, 2014.

denoting individual areas of state activities, and: budget tasks grouping expenditures according to objectives, as well budget sub-tasks grouping activities enabling achievement of objectives of the task within which these sub-tasks have been specified together with a description of objectives of these tasks and sub-tasks as well as basic and target values of indicators of state activities determining the value, quantitative or descriptive specification of the basic and target level of results from the expenditures incurred”. Therefore, **the task structure consists of two basic elements: the functional expenditure classification** (i.e., functions, tasks, subtasks, actions) **and so-called the efficiency part** (i.e. objectives and indicators determined at all four levels of functional expenditure classification).

According to the provisions of PFA the task structure constitutes the basis for the preparation of five – related each other’s – legal institutions:

- financial plans with the task structure of the public finance sector units obliged to prepare such plans by the PFA (article 32 PFA),
- list of priority tasks and objectives for a financial year (article 142 (10) PFA) – inserted in the justification of Budget Bill,
- consolidated performance-based plan of expenditures for the budget year and two subsequent years of state budgetary units, state special-purpose funds, executive agencies, budget institutions and state legal persons (article 142 (11) PFA) – inserted in the justification of Budget Bill,
- List of multiannual performance programs in the task structure (article 122 (1) (4) PFA) – inserted to the justification of Budget Act,
- The Multiannual State Financial Plan (pl. *Wieloletni Plan Finansowy Państwa, WPPF*) (article 103 PFA) – inserted to the resolution of Council of Ministers.

In addition, the justification to the Budget Bill contains the state budget expenditure plan for the budgetary year in the task structure, even if the provisions of PFA do not contain the obligation of its

presentation. However, it should be assumed that this plan is prepared *inter alias* to fulfil the obligation imposed on the Council of Ministers to present to the Sejm and the Supreme Audit Office the information about the realisation of expenditures in the task structure (this obligation results from the article 182 (5) of PFA).

This state budget expenditure plan for the budgetary year in the task structure and the other five institutions introduced by the PFA that are based on the task structure (although in some cases only partially, because e.g. the WPPF includes only the level of functions) constitute the Polish system of performance planning (programming) in the public finance sector, the purpose thereof is to gather information on the results of the public tasks and the public funds allocated to its realisation. It is difficult to consider these institutions as the performance budget, unless in a very broad sense as all information concerning the implementation of public tasks. Such an understanding of performance budget however is not consistent with the definition of the budget neither in economic nor in legal terms.

So far in Poland it has not been yet clearly established what should be understood as the performance budget. Initially as the performance budget was considered a consolidated performance-based plan of expenditures for the budget year and two subsequent years of state budgetary units, state special-purpose funds, executive agencies, budget institutions and state legal persons. The obligation to include this consolidated plan in the Budget Bill justification results from the PFA (article 142 (11)). Currently, the performance task (in economic terms) is more often understood as the state budget expenditure plan for the budgetary year in the task structure, that constitutes one of the attachment for the Budget Bill justification, even if currently binding legal provisions do not contain an unambiguous explanation of performance budget.

Moreover, often, the term “performance budget” is considered as a synonymous of “performance budgeting”, while there are differences between of them. The budget, as it has been explained above is a special kind of a plan, while the budgeting means the method, the process of budget planning, executing and control. Therefore, the budgeting can be

traditional as well as the performance one. According to the definition of OECD, the performance budgeting should be understood as a „management cycle under which programme performance objectives and targets are determined, managers have flexibility to achieve them, actual performance is measured and reported, and this information feeds into decisions about programme funding, design, operations and rewards or penalties”⁵. The definition proposed by M. Robinson and D. Last from International Monetary Fund is even wider. According to these Authors the performance budgeting should be understood as all mechanisms and processes used in the public finance sector that aim to improve the efficiency and effectiveness of public expenditure by linking the funding of public sector organisations to the results they deliver, making systematic use of performance information. Performance-based budgeting should not be seen as an isolated initiative. It should be viewed, rather, as part of a set of broader reforms – often referred to as managing-for-results – designed to focus public management more on results delivered and less on internal processes.⁶

2. Principles of Performance Budget

Performance budget partially is based on the principles of the traditional budget (see chapter 2.1.). However, there are also new “specific” rules of performance budget, i.e. the transparency principle, the effectiveness, efficiency and economy principle (so-called “3E” principle), the multi-annual planning principle, the consolidation principle⁷.

The principle of transparency should constitute the basis of traditional budgetary planning. However with the introduction of the performance budgeting this principle gains new meaning. The principle of transparency traditionally understood means transparency

5 OECD, *Modernising Government. The way forward*, Paris 2005, p. 59.

6 M. Robinson, D. Last, *A Basic Model of Performance-Based Budgeting*, Technical Notes and Manuals of International Monetary Fund, January 2009, p. 2.

7 T. Lubińska, T. Strąk, A. Lozano-Platonoff, M. Będzieszak, M. Godek, *Paradygmat budżetowania zadaniowego [Paradigm of performance budgeting]* in: T. Lubińska (ed.), *Kierunki modernizacji zarządzania w jednostkach samorządu terytorialnego [Directions of management modernisation in local government units]*, Warszawa 2011, p. 62–63.

of public finances operations and mainly is carried out by the budget classification (i.e. parts, divisions, chapters) and the comparability of financial reports⁸. Such understanding of transparency principle remains still valid. However, thanks to change of budgetary classification the content of budget becomes understandable not only for specialists of public finances but also for citizens, tax payers and public services users.

The scope of information in the performance budget is much wider because – apart the financial part of the budget (containing the expenditure's limits) – it contains also so-called the performance part (objectives and indicators), which allows to obtain the information on the results of the public administration. The advantage of the performance budget, contributing to more transparent budget presentation, consists of using the uniform criteria of the expenditure allocation – indicating the field of activity financed from public funds and not that activity or an institution designated to dispose that funds.

The adoption of the revitalised transparency principle as a fundamental principle of performance budget is the starting point to define the remaining principles. Transparency is a condition of the efficient, effective, and economical public funds spending. Thus, in the theoretical assumptions of the analysed conception developed in the United Kingdom it was decided that the performance budget should be based on the **“3E” principle (i.e. effectiveness, efficiency and economy)**. The effectiveness refers to the quality of public goods or services provided to citizens, the efficiency should be considered in economic terms as the ratio of services provided (manufactured products) to their cost. The economy means using the human resources, financial or material funds, in the right quantity and quality, at the right time and at the lowest possible cost. These three concepts are closely related each other. Funds (i.e. economies) obtained by increasing the efficiency then can be spent on improving the quality (i.e. efficacy) of public services.

8 E. Ruśkowski, J.M. Salachna (eds.), Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny [New Act on Public Finances with the Introductory Act], Gdańsk 2010, p. 129–130.

Although provisions of PFA refer several times to the category of efficiency and effectiveness (cf. article 68, 174, 175), the introduced instruments mainly allow the measurement of the public administration efficiency and effectiveness rather than improving them. Increasing the effectiveness and the efficiency is possible thanks to the introduction of the performance budget in the legal sense because of the following reasons.

Firstly, the increase of the efficiency and the effectiveness of public services delivery becomes possible thanks to the renouncement from the historical budgeting methods and the application of the zero-based budgeting method which allows already at the stage of drafting the budget the resignation from financing the redundant and unnecessary tasks, that in turn enables an increase in spending public money on other areas⁹. In the traditional budget there is a conviction that “a good budget” means the budget where expenditures for a given public policy are not higher than the expenditures in the budget for the previous year. However, in fact “a good budget” does not mean the budget where the expenditures do not increase (in budget of the private enterprise such an assumption would have been meaningless), but that enables the realisation of the determined objectives using minimal resources¹⁰.

Secondly, to prepare the performance budget, the method called management by objectives is used that already at the stage of planning requires the precise justification of the measures needed for the implementation of particular tasks as well planning outcomes that should be achieved. Also at the stage of the execution of the performance budget, the correct decisions about spending are taken in order to enable the achievement of the objectives. Its realisation is measured by the objective criteria (indicators) and precise calculations. With the introduction of the performance budget the passive administration of

9 See: M. Zawicki, S. Mazur, J. Bober (eds.), *Zarządzanie w samorządzie terytorialnym. Najlepsze praktyki* [Management in local government units. Best practices], Kraków 2004, p. 62.

10 J. Arthuis, *Raport d'information n°388 du 9 juillet 2003 de la Commission des Finances, du contrôle budgétaire et des comptes économiques de la Nation sur l'état d'avancement de la mise en oeuvre de LOLF* [Information report vol. 388 of July 9, 2003 of the Finances, Budgetary Control and economic national accounts on the status of the implementation of the LOLF], p. 21.

public funds is replaced by creative management, what can contribute to more efficient and effective public funds spending. However, in order to introduce the real public management, the appropriate legal solutions increasing the managerial autonomy and elasticity of actions should be effectively introduced. In other cases, the public managers would not be able to realise planned values of indicators.

Thirdly, the introduction of the performance budget should imply changes in the field of spending control. More precisely, the unilateral control (only financial one) of financial plan execution should be completed by the control of results realised by the comparison of funds with the outcomes.

Fourthly, the effectiveness and they efficiency increase should be realised through strategic reflection carried out over the borders of the ministries. Such a reflection is necessary (and possible thanks to performance budget) because some ministries realise similar or complementary task that should be evaluated within one coherent program. It is important to precisely designate the responsible for the implementation of such programs.

Increasing the efficiency and the effectiveness of public administration is possible especially when the performance budget has legal (and not only economic) character. Then the expenditure are planned, executed and controlled in the task system (such a situation take place e.g. in France). However, in Poland, where only the traditional budget is binding in the legal sense, increasing the efficiency and effectiveness is only partially possible, mainly at the stage of expenditure planning. In such a situation, it is necessary to firstly prepare the performance budget and secondly the traditional one and not in the reverse order as it often take place in Poland. Lack of flexibility at the stage of performance budget implementation and the impossibility of practical application of the information obtained through results audit are currently in Poland major limitations of the efficiency and the effectiveness improving.

Comprehensive transparency of the budgetary performance planning can be achieved only in the long-term perspective, therefore often the performance budget is used complementary next to the annual

planning. According to some Authors¹¹ we can talk not only about the multi-annual planning but also about **principle of multi-annuality**. That principle obliges to plan objectives, tasks, expenditures and effects in multi-annual perspective and to integrate these values with the strategic documents¹². Making link between the performance budget with multi-annual budgetary should be made either at the time of the introduction of performance budget (as it was done e.g. in the United Kingdom) or in subsequent stages of the implementation of performance budget (such a solution was adopted e.g. in France). In the long-term perspective the expenditure (usually only at the highest level of functional classification) can be planned as well as its results through planning in long-term perspective values of indicators.

The principle of multi-annuality was not formally inscribed in Poland in any legal provisions, however, the instruments that allow the extension of the planning horizon are gradually introduced to Polish legal system (e.g. multiannual programs put annually in budget law or Multiannual State Financial Plan, WFPF).

The introduction of the principle of multi-annuality in public finances does not contradict in any sense the annuality principle (these principles are complementary). Act authorising the collection of revenues, incomes, expenditures and expenses (i.e. the Budget Act) is adopted for a period of one year, while multiannual plans begin to play more important role in the decision making process concerning public funds allocation.

Among the performance budget principles also **the consolidation principle** is sometimes mentioned. That principle postulates the synergy of measures implemented in frame of similar tasks financed from the state budget and funds of other entities related in some way with the state budget¹³. Among the Polish representatives doctrine, i.e. C. Kosikowski¹⁴ sees the benefits of a holistic approach of public

11 T. Lubińska, *Budżet zadaniowy w Polsce. Reorientacja z wydatkowania na zarządzanie pieniędzmi publicznymi*, [Performance budgeting in Poland. Reorientation from the spending to management of public funds], Warszawa 2007, p. 34.

12 T. Lubińska, T. Strąk, A. Lozano-Platonoff, M. Będzieszak, M. Godek, *op. cit.*, p. 67.

13 *Ibidem*.

14 C. Kosikowski, *Nowa ustawa...*, p. 28.

finance sector. It results from the fact that the Polish public finances are highly deconcentrated, making impossible to exercise the full control over thereof and topursue financial policy based on the integrity of public funds. Lack of comprehensive approach make also difficult ensuring the financial equilibrium and sustainability of public debt. Currently the consolidation principle still remains only in the sphere of postulates, although the Multiannual Financial State Plan covers alsosome entities of public sector outside the governmental sub-sector.

3. Performance Budgeting as Instrument of New Public Management

The performance budget is one of the instruments belonging to the comprehensive concept of transformation and modernisation of the public administration, called the New Public Management, NPM (contrary to the old public management). This term was coined in the late 1980s to denote a new (or renewed) stress on the importance of management and public service delivery often linked to doctrines of economic rationalism¹⁵. NPM instruments are not independent one of each other. On the contrary, the performance budgeting, complementary with the other NPM instruments is used to rationalise public expenditure. Among the others instruments of NPM are i.e.: management by objectives, public-private partnership, benchmarking, outsourcing, multiannual planning horizon, accrual method of accounting. Nowadays the instruments of NPM are used all over the world¹⁶.

The theoretical assumptions of the NPM were inspired by the methods, techniques and institutions used in the private sector. At the stage of the its conceptualisation it has become necessary to adapt these solutions to the specificity of the public sector. However, even though

15 C. Hood, *Public administration and public policy: Intellectual challenges for the 1990s*, *Australian Journal of Public Administration*, 1989, vol. 48, at 346–348.

16 At the beginning of the 21st century, however, it turned out that the NPM itself is not sufficient for the efficient functioning of the public administration and it is necessary to enrich it by the Public Governance concept that consists of including into the process of public decision-making participation of citizens and residents. One of the instruments of the Public Governance gaining more and more popularity in many countries (including Poland) is participatory budgeting.

some serious problems appear at the state of practical application of the NPM instruments. These problems result from the fact that the private and public sectors realise different goals. Companies are focused on profit-making activity, while the state on the delivery of public services. Thus, the desired result of activity at both the state and local government is the efficiency and the effectiveness of public service delivery. In the private sector, thanks to the evaluation system in the production of private goods process, the market economy is able to achieve an efficient allocation of resources¹⁷. Thanks to the “invisible hand of market” only producers who effectively produce their goods with the appropriate quality and price are able to persuade potential customers to purchase their goods and in consequence they remain in the market.

For obvious reasons, the criterion of profit cannot be used to assess the functioning of the public sector, therefore it became necessary to introduce other criteria. For this purpose, various types of indicators and the efficient forms of management and results control are used. However, the choice of the indicators that would measure the functioning of public administration in the satisfactory way encounters the difficulties, especially in the case of task consisting of the realisation of the imperious powers (i.e. justice, audit control) that do not have the character of typical services (contrary to the construction of roads or teaching), where it is easier to evaluate the quality thereof.

4. Traditional Budget versus Performance Budget

The main differences between the traditional budget and the performance one concern the expenditure classification and the ensuring the transparency of public revenues allocation, budgeting's methods, planning horizon and the level of flexibility in the process of budgetary incomes allocation.

The traditional budget is also called the line-item budget due to the fact that is developed in the form of tables containing revenues

17 J.E. Stiglitz, *Ekonomia sektora publicznego* [Public sector economy], Warszawa 2004, p. 184–185.

and expenditures in accordance with the budget classification¹⁸. The measurement of public administration's results on the basis of the traditional classification would be extremely difficult, even in many cases impossible. This is due to the fact that the traditional budget is based on the traditional, so-called administrative classification, where the public funds destination is indicated by the identification of the person or body that is destined to dispose the particular expenditure limit. Another (detailing) criterion of the expenditure allocation is their economic nature, so-called **economic classification**, where i.e. current expenditures, the capital ones, the expenditures on the public debt are distinguished¹⁹. In Poland the binding traditional budget classification (the administrative one) consists of parts, divisions and chapters (for more details on the budgetary classification see section 2.3.). These structure has a mixed character. While divisions are distinguished using the activity criterion (i.e. 010 *Agriculture and Hunting*, 020 *Hunting*), both parts (i.e. 01 *President Chancellery*, 20 *Science*) and chapters are distinguished using both institutional or activity criterion making difficult (or even impossible) to distinguish the realisation of public tasks from the public entities that should realise them.

The performance budget is based on the functional expenditure classification and also (as in the traditional one) the economic classification constitute the detailing criterion. **The functional classification** used in the performance budget provide more opportunities, where the expenditure division is made using exclusively the activity criterion, therefore, planning refers to the type, the quantity and quality of public services²⁰.

Therefore, the traditional budget focuses primarily on the expenditure limits and not on the results, which should be achieved using them, as it happens in the case of the performance budget. The

18 S. Owsiak (ed.), *Budżet władz lokalnych [Budget of local government units]*, Warszawa 2002, p. 85.

19 B. Chevauchez, *Actualité des grands principes budgétaires [Actuality of basic budgetary principles]* in: A. Roux (ed.), *Finances publiques [Public finances]*, Paris 2006, p. 18.

20 M. Będzieszak, *Budżet zadaniowy – wyzwania dla państwa i samorządu terytorialnego [Performance budgeting – challenges for the state and local government]* in: L. Patrzalek (ed.), *Stan i kierunki rozwoju finansów publicznych samorządu terytorialnego [State and development directions of local government units' public finances]*, Poznań-Wrocław 2007, p. 165.

performance budget indicates the level of public needs realisation, so the expenditure allocation information is more transparent²¹. The traditional budget does not provide such information where in consequence there is no possibility to compare costs and benefits.

The traditional budget is a tool of public funds administration. This is due to the fact that it contains the detailed expenditure limits and the possibilities of its modifications are quite restricted. Such a solution allows the detailed control of compliance with set spending limits but there is no place to compare public expenditure with the effects of its spending. It does not provide the adequate allocation of budgetary resources and causes that the budget fulfils mostly the control functions, which consists primarily of confrontation planning and execution²² while the traditional budget does not provide to the decision-makers the information needed to effective and efficacy public management and does not motivate them to introduction of innovations²³.

Replacement the traditional budget by the performance one means the renouncement in the public sector from the concept of traditional administration in favour of the management of financial and human resources similarly as in the private sector. Public managers²⁴ submitting reports on their activities are becoming accountable for their results. To enable the public managers the achievement of the results planned in the performance budget (i.e. reducing unemployment, improving road safety), they are equipped with the more flexible possibilities of public spending.

Unlike as in the traditional budget, their primary duty is not to comply with a detailed division for the expenditure economic groups of each task (which in the performance budget has only the indicative character), but to implement the concrete, pre-planned objectives of these tasks. Thanks to that expenditures generalisation,

21 K. Piotrowska-Marczak, *Metody budżetowania a proces racjonalizacji finansów publicznych w Polsce* [Budgeting methods and the public finances rationalisation processes] in: T. Juja, J. Kotlińska (eds.), *Stan i kierunki rozwoju finansów publicznych* [State and development directions of public finances], Poznań 2010, p. 101.

22 K. Piotrowska-Marczak, *op. cit.*, p. 101.

23 S. Owsiak (ed.), *op. cit.*, p. 86.

24 Simultaneously with the transfer of the techniques from the private sector to the public one, there is also a transfer of the terminology.

the public managers can freely transfer their funds within the overall limit (restrictions usually are related to the interdiction of increasing personal expenditures, i.e. for the remuneration). The measurement of the achieved results is made thanks to so-called the performance part of the budget (that is absent in the traditional budget) that consists of the objectives and indicators.

The expenditure planning in the traditional budget is largely based on the historical method, while in the case of performance one the zero-based method is used. In the historical method the level and the structure of the budget expenditures are established mainly on the basis of the expenditures planned (realised) in the previous year and therefore it does not allow to link the financial funds with the realisation of particular effects. Even if the final expenditure level is determined after taking into account, i.e., the data resulting from the comparison of the results already obtained with the planned one, the projected macroeconomic indicators and changes in the legal provisions²⁵, however, rarely new variants of the tasks, the different ways of financing, or the effects of the cancellation of the specific objectives and public tasks are taken into account, what often leads to fixation of expenditure structure non-adequate to the real public needs.

Another problem that often accompanies the traditional budget is “the December effect” that consist of spending public funds available at the end of the financial year in not always thoughtful way for fear of the reduction funds in next year’s budget (based mainly on the historical method)²⁶.

In the traditional budgeting there is no sufficient link between expenditures and State tasks, since it consists of separating the relevant budgetary envelopes made available to the budget administrators, who subsequently rather share what they have received than plan the tasks and objectives. What is more, they have limited opportunities to make

25 J. Stankiewicz, Zagadnienia racjonalizacji wydatków publicznych [Issues of public spending rationalisation] in: E. Ruśkowski (ed.), *Finanse publiczne i prawo finansowe* [Public finances and financial law], t. 2, Warszawa 2000, p. 314.

26 M. Podstawka (ed.), *Finanse* [Finances], Warszawa 2010, p. 145.

consistent expenditures coming from different sources, especially from special-purpose funds and the European Union budget²⁷.

The obligation of elaboration of the functional classification requires using different method in the process of expenditure planning (zero-based budgeting) than in the case of the traditional one. In that method the actual public needs and preferences established in the form of objectives for the budgetary year (and not the expenditure limits adopted for the previous year) are the starting point for budgetary expenditure planning. Thanks to the introduction of performance budget the special emphasis is put on the objectives of particular public policies. It does not mean that such objectives are not determined in the traditional budget, however mostly they are defined in too general, vague, ambiguous, and sometimes even contradictory way²⁸. The performance budget obliges the government to define objectives, identify their hierarchy and allocate adequate resources for their implementation and, therefore it strongly incites to the profound reflection on the adequacy of financial and human measures, to compare them to the objectives, as well to make the analysis of different alternatives²⁹.

One of the undeniable advantages of the performance budget is the possibility to surpass the legal framework of the annual budget and to carry out reflection on the priorities requiring the medium-term perspective³⁰. The performance budget does not deny the principle of annuality (one of the basic principles of traditional budget), but fits the annual planning in the multiannual perspective. The performance planning in the long-term horizon has undoubted advantages over the traditional annual budget, because it eliminates the occurrence of the above-mentioned “December effect” (typical for the traditional budget) thanks to directing the allocated resources to the task’s objectives. Duration of the task’s realisation is used to evaluate the efficiency of

27 C. Kosikowski, *Naprawa finansów publicznych w Polsce. Przyczyny, metodologia, kierunkii propozycje* [Public finances recovery in Poland. Causes, methodology, directions and propositions], Białystok 2011, p. 457.

28 B. Chevauchez, *Réforme de l'État: les perspectives ouvertes par la LOLF* [State reform: perspectives opened by the LOLF] in: B. Ferrandon, *Budget de l'État et finances publiques* [State budget and public finances], Paris 2005, p. 22.

29 L. Philip (ed.), *Dictionnaire encyclopédique de finances publiques* [Encyclopaedic dictionary of public finances], Paris 1991, p. 206.

30 *Ibidem*.

the unit, while in the absence of objective reasons, there is no reasons to increase or decrease the allocated funds³¹.

5. Performance Budgeting at Local Level

The first Polish experiences in the field of the performance budgeting did not concern the state budget but the local ones. Some of the Polish local government units have implemented it voluntarily since the early nineties of the last century, and therefore these local units who have taken that special challenge, have gathered quite rich (in some cases lasting even twenty years) experiences in the preparation and execution of this alternative budgeting method. The city Cracow was the precursor in the implementation of that field (the performance budget – in economic sense – is elaborated here from 1994). Apart Cracow, the performance budget has been also implemented in Szczecin, Gdańsk, Poznań, Warsaw, Plock, Lublin, as well as smaller municipalities, as i.e. Goleniów. The Polish legislator has not obliged the local governments units to implement the performance budget and simultaneously has not prohibited to do it. On the one hand, such a solution does not contribute to the widespread preparation and implementation of the performance budget in the numerous local government units³². However on the other hand, the down-top method of the performance budget implementation in the case of Polish local government unit seems to be the right solution. It makes possible to gradually develop own model of performance budget, adapted in the best way to the individual needs of local units diversified in terms of size, wealth and tasks. In that way at least one serious risk – consisting of the fact that that the performance budget implementation would have been only the formal realisation of the imposed obligation – has been eliminated.

The implementation of the performance budget in the local government units is easier, can bring greater benefits – and what is

31 M. Podstawka (ed.), *op. cit.*, p. 145.

32 L. Patrzalek, Przesłanki i warunki wdrażania budżetu zadaniowego w jednostkach samorządu terytorialnego [Premises and conditions of performance budgeting implementation in local government units] in: T. Juja, J. Kotlińska (ed.), *op. cit.*, p. 97–98.

more in a shorter period of time – than at the central level³³. This is due to the fact that in the case of the tasks of local units the definition of objectives, targets and indicators poses much less difficulties because the tasks of local units in large part consist of provision of specific services for citizens, whereas the entities belonging to the central level realise largely the supervisory and coordinating tasks (so the results are difficult to measure and can be evaluated more often only in the long-term perspective).

The binding PFA does not contain any legal provisions concerning the performance budget at the local level, therefore, only the traditional one is legally regulated form of planning. The inexistence of relevant provisions does not mean the prohibition of the implementation of the performance budget at the local level. This alternative form of preparation and execution of the budget just cannot replace the traditional budget. In consequence, exceeding the spending limits established for each task in the performance budget task does not have any legal effects.

Finally, it should be noted that although PFA has not introduced the obligation to implement the performance budget at local level, indirectly some of its provisions oblige to apply some selected elements of performance budget, i.e. the obligation to conduct the management control (that aims at, *inter alias*, to ensure the efficiency and effectiveness of realisation of local task), the obligation to plan multiannual performance programs (and put them in the multiannual financial forecasts (that constitutes *de facto* one of the elements of performance budget).

33 See: S. Franek, M. Będzieszak, T. Lubińska, Wdrażanie budżetu zadaniowego w jednostkach samorządu terytorialnego [Implementation of performance budgeting in local government units], *Finanse* 2010, n°3, at 30–37.

PUBLIC FINANCE CONTROL

1. Internal Control

1.1. Preliminary Control realised by Chief Accountant

The preliminary internal control of public finance traditionally is executed by the Chief Accountant (or the Treasurer in the case of local government units). Chief Accountant (the Treasurer) beside keeping the books of the entity and the realisation of the financial orders with regard to funds is also obliged to carry out the preliminary audit of conformity of economic and financial operations with the financial plan, as well the completeness and sincerity of documents regarding economic and financial operations.

The Chief Accountant confirms the preliminary control with his own signature affixed on the documents regarding the relevant operation. Affixing the signature by the Chief Accountant on the document next to the signature of the employee competent in this subject matter means that:

- no objections are raised to the evaluation of correctness of this operation and the conformity thereof with the legal provisions delivered by the employees competent in this subject matter;
- no objections are raised to the completeness or reliability in formal and accounting terms or correctness of the documents regarding this operation;
- obligation arising from the operation fall into the scope of the entity's financial plan.

In the event of irregularities the Chief Accountant returns the document to the employee competent in this subject matter and refuses to sign the relevant document in case the irregularities are not removed. The Chief Accountant notifies in writing the head of the entity of the refusal to sign the document and the reasons thereof. The head of the entity may withhold implementation of the operation put into question or issue an instruction in writing to implement it. If the head of the unit issues an instruction to implement the operation put into question, he notifies in writing the administrator of the budget part immediately thereof and in the case of local government units and some specified units for which a local government unit acts as the founding authority – the management board of the local government unit providing reasons of implementing the operation put into question. In the event the instruction is issued by a commune foreman, a mayor, a district governor or a province marshal, they notify the founding authority of the local government unit and the competent Regional Chamber of Auditors (article 55 of PFA).

1.2. Management Control

In order to explain the general aim of management control, let's firstly compare it to driving a car. If the public entity could be compared to the car, its activity to travel to the town of X at a given period of time, and its director to the driver, the system of management control will include: the construction of the car, the way its exploitation and maintenance, traffic laws, competencies, skills and experience of the driver, any passengers or loads in this car, and – what is very important – the set of all installations that continuously measure the most important parameters of driving and functioning of all devices (such as speed measurement, lights work), and in the case of danger of not reaching the destination that inform about this problem.¹

The management control involves self-improvement of organisation, continuity of diagnosis, monitor and improvement the

1 Ministerstwo Finansów, Kontrola zarządcza w sektorze finansów publicznych. Istota, unormowania prawne i otoczenie. Kompendium wiedzy [Management control in public finances sector. Essence, legal provisions and environment], February 2012, p. 18.

functioning of the organisation. In consequence, there is no uniform and common to all entities path of the deployment and never the state of the “implementation” of the management control will be ever possible to be achieved phase “implementation” of the management control. It is rather the project that in fact never can be considered as completed².

The management control is realised in all public finance sector units. According to the article 68 of PFA the management control in public finance sector entities comprises a general set of activities undertaken in order to ensure the implementation of objectives and tasks in an effective, economical and timely manner compliant with the legal provisions. The objective of management control is to ensure in particular: conformity of operation with the legal provisions and internal procedures, efficiency and effectiveness of operation, credibility of reports, protection of resources, observance and promotion of ethical conduct rules, efficiency and effectiveness of information flow and finally risk management.

Ensuring an adequate, efficient and effective management control is the responsibility of:

- a) the minister in government administration departments he is in charge of,
- b) a commune foreman, a mayor, a chairman of the management board of the local government unit,
- c) the head of the entity (article 69 of PFA).

By the end of November each year, the ministers in charge of the department draw up an action plan of management control for the following year for the government administration departments they are in charge of. On the basis of such a plan the heads of units subordinated to the departments prepare its own action plans. Such actions plan include in particular a specification of objectives within individual budget tasks and sub-tasks together with the indicators specifying the extent of objective implementation and the planned values thereof. By the end of April each year, the ministers draw up a report on the

2 Ibidem.

execution of the action plan of management control and shall submit a statement on the condition of management control for the preceding year in the scope of government administration departments he is in charge of. The heads of subordinated units prepare the reports of realisation of their action plans as well (article 70 of PFA).

The Finance Minister has the special role in the scope of coordinating management control in public finance sector units, its task include the following in particular: propagating the international standards of management control, issuing guidelines and cooperating with domestic and foreign organisations.

1.3. Internal Audit

The internal audit constitutes an independent and objective operation aiming at supporting the head of the unit in order to implement objectives and tasks. It consists of two kind of activity that are related one with the other. Firstly, it consists of asymmetric assessment of management control that should evaluate in particular the adequacy, efficiency, effectiveness of management control in government administration or in the unit. So that aspect of the internal audit is strictly connected to the described above management control. The second aspect of the internal audit consists of the consulting activities (article 272 PFA).

The internal audit is carried in selected public finance sector units (contrary to management control that is realised in all public finance sector). There are three main categories of entities where the internal audit is carried out obligatorily or optionally. In the first group, there are entities obliged to carry out the internal audit unconditionally, i.e. the Office of the Prime Minister, Ministries, Offices of Province Governors, Customs Chambers, Fiscal Chambers, the Social Insurance Institution (including funds managed thereby), the Agricultural Social Insurance Fund (funds managed by the President of the Agricultural Social Insurance Fund), the National Health Fund. In the second group there are the entities obliged to carry out the internal audit on the condition that:

- the amount of revenues or the amount of expenditures exceeds PLN 40 000 000 (state budgetary units),
- the amount of incomes or costs declared in the financial plan exceeds PLN 40 000 000 (state higher education institutions, independent public healthcare facilities not established by local government units, executive agencies, state special-purpose funds),
- the amount of revenues and incomes or the amount of expenditures and expenses declared in the budget resolution exceeds PLN 40 000 000 (local government units).

Finally, in the third group there are the public finance sector entities the heads of which decide to carry out internal audit (article 274 of PFA).

The internal audit can be realised either by the internal auditor employed in the unit or the contractor not employed in the unit (article 275 of PFA). The detailed provisions of PFA specify in which entities and under which conditions the internal audit can be executed by the internal auditor employed in the unit or by a contractor.

2. External Control

2.1. The Supreme Audit Office

2.1.1. Legal Framework

The Supreme Audit Office (pl. *Najwyższa Izba Kontroli*, NIK) is the principal state audit bodysubordinate to the Sejm. For instance, in 2012 in the area of public finances NIK audited among others: state budget execution, security of the financial system in Poland, execution of the excise tax, use of public funds by state-owned companies, process of restructuring and privatisation of state-owned companies, public aid in the special economic zones. However, NIK is competent not only in the domain of public finances but also in such domains as: quality of public services (i.e. accessibility of public utility facilities to disabled

people, management of community units), public order and safety (i.e. security of mass events, security of civil aviation), economic affairs (i.e. infrastructure investments in the Polish railways, construction of roads and highways). Each year NIK supplies Sejm with around 200 such reports³.

The general regulations on the Supreme Audit Office has been included in below cited article 202–207 of the Polish Constitution, the detailed ones in the Supreme Audit Office Act of Dec. 23, 1994⁴.

Constitutional provisions concerning the Supreme Audit Office:⁵

Article 202

1. The Supreme Audit Office shall be the principal state audit body.
2. The Supreme Audit Office shall be subordinate to the Sejm.
3. The Supreme Audit Office shall act in accordance with the principle of collegiate responsibility.

Article 203

1. The Supreme Audit Office shall audit the activity of government administration bodies, the National Bank of Poland (NBP), state legal persons and other state organisational units with regard to legality, sound management, efficacy and integrity.
2. The Supreme Audit Office may audit the activity of local government units, municipal legal persons and other municipal organisational units with regard to legality, sound management and integrity.
3. The Supreme Audit Office may also audit, with regard to legality and sound management, the activity of other organisational units and economic entities (entrepreneurs) to the extent to which

3 Annual Report 2012 on the activity of the Polish Supreme Audit Office, Warszawa 2013, p. 7–12, www.nik.gov.pl, last accessed June 1, 2014.

4 Ustawaz dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli – Supreme Audit Office Act of Dec. 23, 1994 (Dz.U. 1994, vol. 13, item 59, with amendments). The working English version of the NIK Act is available one the NIK's website (<http://www.nik.gov.pl/plik/id,2759.pdf>).

5 Source: NIK, Working translation by the NIK International Relations Unit, www.nik.gov.pl/en/about-us, last accessed Sept. 1, 2013.

they use state or municipal assets or resources, or fulfil financial obligations to the State.

Article 204

1. The Supreme Audit Office shall submit to the Sejm:
 - a) analysis of the state budget execution and monetary policy guidelines,
 - b) opinion on the vote of approval for the Council of Ministers,
 - c) pronouncements on the results of audits, recommendations and statements as provided for by law.
2. The Supreme Audit Office shall submit to the Sejm annual reports on its activity.

Article 205

1. The President of the Supreme Audit Office shall be appointed by the Sejm, with the consent of the Senate, for a six-year term of office and can be reappointed only once.
2. The President of the Supreme Audit Office shall not hold any other post, except for a professorship at a university, nor perform any other professional activity.
3. The President of the Supreme Audit Office shall not belong to a political party, a trade union nor perform any public activity that cannot be reconciled with the requirements of the post of the President.

Article 206

The President of the Supreme Audit Office shall not be held accountable nor deprived of liberty without prior consent of the Sejm. The President of the Supreme Audit Office may be neither detained nor arrested, except for cases when the President has been apprehended in the commission of an offence and in which detention is necessary for securing the proper course of proceedings. The President of the Sejm shall be notified forthwith of such detention and may order an immediate release of the person detained.

Article 207

The organisation and mode of work of the Supreme Audit Office shall be provided for by law.

2.1.2. Principles of Audit Procedure

Among the basic principles of the audit procedure should be mentioned⁶:

- 1) the principle of a separate regulation of the audit proceedings realised by NIK,
- 2) the principle of planning and programming of audits,
- 3) principle of objective truth,
- 4) the principle of contradictory procedure,
- 5) the principle of written form.

According to **the principle of a separate regulation of the audit proceedings realised by the NIK** the audit proceedings should be conducted under the provisions of the separate law – Supreme Audit Office Act (article 27 of NIK Act).

The principle of planning and programming of audits requires that the audits in general should be planned in advance in the audit programs. Every audit included in the annual work plan of the Supreme Audit Office is conducted in accordance with the audit programme approved by the President or a Vice-President of the Supreme Audit Office. Ad-hoc audits can be conducted with the consent of the President or a Vice-President of NIK according to the topics approved by the director of the relevant auditing unit. If an audit is conducted by several auditing units, the audit topic are approved by the director of the auditing unit coordinating the audit (article 28a of NIK Act).

The principle of the objective truth obliges that the audit findings reflect the actual state of the audited activities units and that

6 The number of the principles depend of the Author, some of them indicated only four of five of them. For more details see: A. Pomorska, *Kontrola finansowa Najwyższej Izby Kontroli* [Financial control of Supreme Audit Office], in: C. Kosikowski, E. Ruśkowski (eds.), 2006, *op. cit.*, p. 798–802.

these findings were well documented. To realise this aim at the request of NIK, heads of audited entities the entities forth with submit any documents and materials, including onelectronic media, indispensable to preparing and conducting the audit, and allow access to data bases, respecting the regulations on statutorily protected secrets. On the other hand, authorized representatives of NIK are entitled to:

- a) freely access the premises of auditees,
- b) examine any documents related to the activity of auditees, collect and secure documents and other evidence, respecting the regulations on statutorily protected secrets,
- c) conduct physical examination of the premises, items of property and examinehow certain operations proceed,
- d) call witnesses to testify,
- e) request explanations from the persons who have worked for the auditees underan employment or other contract,
- f) request information or documents from entities other than those audited, aswell as explanations from the employees thereof, in connection with an auditbeing prepared or conducted,
- g) use the work of auditor's experts and specialists,
- h) convene meetings in connection with the audit being conducted,
- i) process personal data (article 29 of NIK Act).

The principle of contradictory procedure that is traditionally applied in the judiciary procedure oblige the parties of the proceedings to present all relevant information and circumstances to the judges who should only assess the gathered materials. This principle is based on the assumption that truth can cognized when two contradictory views are opposed. The contradictory character of audit procedure of NIK has limited scope. The head of the audited entity has possibility to furnish an auditor with a verbal or written statement concerning the object of the audit or additional explanations about the reasons and circumstances of irregularities. What is more the head of the audited entity has the special powers during the appeal procedure.

The aim of **the principle of written form** is to ensure the legal safety. In the field of the audits conducted by NIK that principle is realised by the written form of: i.e.: audit reports, justifications, opinions, relieving from the obligation to keep statutorily protected secrets etc.

2.1.3. Audit Scope and Audit Criteria

The Supreme Audit Office **audit three main categories of subjects**. Firstly, NIK audit the activity of government administration bodies, the National Bank of Poland (NBP), state legal persons and other state organisational units. The audit criteria in that case are: legality, sound management, efficacy and integrity. Secondly, NIK audit may audit the activity of local government units, municipal legal persons and other municipal organisational units, in that case with regard to legality, sound management and integrity (NIK is not authorised to evaluate the efficacy of these units). Thirdly, NIK regarding the legality and sound management may audit the activity of other organisational units and economic entities (entrepreneurs) to the extent to which they use state or municipal assets or resources, or fulfil financial obligations to the State, in particular if they:

- a) perform tasks ordered or assigned by the State or local governments units,
- b) perform public procurement for the benefit of the State or local governments units,
- c) organise or carry out intervention or public works,
- d) act with the involvement of the State or local governments units, use state or local governments units property, including resources granted upon international agreements,
- e) benefit from individual support, surety or guarantee granted by the government, local self-government,
- f) grant or benefit from state aid subject to monitoring under separate regulations,
- g) execute tasks in the area of public health insurance,

h) discharge the obligations subject to the provisions of the Tax Statute Act⁷, discharge other payments due to the State Budget, self-financing public enterprises, state appropriation funds and other cash benefits towards the State, resulting from civil-law relationships.

The Supreme Audit Office audit state, local and other entities with regard to the different above-mentioned criteria (summarised in the table n°4).

Table n°4. Audit criteria applied by the Supreme Audit Office

State entities	Local entities	Other entities
Legality	Legality	Legality
Sound management	Sound management	Sound management
Integrity	Integrity	
Efficacy		

Source: Own elaboration on the basis of the article 203 of Polish Constitution.

The interpretation of the content of these criteria is crucial from the point of audit practice, however sometimes it poses some difficulties⁸. Let's explain the meaning of these criteria.

Firstly, the audit in terms of **legality** means verification whether the activities of audited entities are conducted in accordance with the binging law, both the general (the Constitution, statutes, regulations etc.) and the internal one (i.e. defining tasks and competences of employees). Verifying the legality, the auditors evaluate whether the law is observed. If not, they determine the causes of such situation and present conclusions aiming at removing the irregularities.

Secondly, the analysis of audited activity in terms of **sound management** are conducted to indicate if the public funds were used economically and expenditures were proportional to the achieved

7 Ustawa z dnia 29 sierpnia 1997 r. – Ordynacja podatkowa [Tax Procedure Act of Aug. 27, 1997] (Dz.U. 2005, vol. 8 item 60, with amendments).

8 A. Pomorska, *op. cit.*, p. 796–798.

results. In the event of damages, the inspectors check if every opportunity to prevent them or reduce their size has been used.

Thirdly, in the case of the criterion of **integrity**, inspectors examine whether the obligations in audited institutions were carry out with due diligence, conscientiously and timely. So, as part of the measures of integrity behaviours of employees of public institutions are assessed. The ethos of the staff is not formally defined by the law, even though it constitutes quite important element for the functioning of every public authority, both of the state and local levels.

Finally, the audit of **efficacy** consists of the evaluation whether the activities carried out by the audited entity are adequate for its purposes determined by law. The auditors also verify if the optimal methods and means were applied to achieve the objectives, and above all, whether its objectives have been achieved.⁹

2.1.4. Organisation and Competences of the Supreme Audit Office

The hole activity of the Supreme Audit Office is managed by the **President of NIK** who is accountable to the Sejm. He is appointed by the Sejm by absolute majority of votes, with the consent of the Senate upon request of the President of the Sejm or of a group of at least 35 Members of the Sejm. The term of office of the President of NIK is 6 years. The same person may be appointed the President of the NIK for no more than 2 terms of office. The NIK has 3 Vice-Presidents to be appointed and dismissed by the President of the Sejm upon request of the President of NIK. The Board of NIK consists of the President of NIK acting as the Chairperson, Vice-Presidents, General Director of NIK, and 14 Members of the board. The term of office of members of the board of NIK is 3 years from the date of appointment.

The organisational structure of the NIK consists of 14 audit departments (i.e. Department of Budget & Finance Department of Health), 4 administrative departments (IT Department, Accounts

9 Kryteria kontroli NIK [NIK's control criteria], October 2010, www.nik.gov.pl, last accessed April 5, 2014.

Department), 16 regional audit branches (one in every capital of voivodship, i.e. Regional Branch in Cracow, Regional Branch in Białystok) and some other offices. Audit departments and regional branches audit the units spending public funds. Administrative departments carry out tasks pertaining to the organisation and support of the NIK's operations.

The most important audit realised by NIK is **the state budget execution audit**. Every year, NIK carries out audits in about 400 entities within the state budget execution audit. More than 50 per cent of tasks carried out by NIK in the year concerns the state budget execution. In January inspectors begin to study how individual institutions have benefited from public money. As a result of that audit activity of all administrative and regional departments of NIK two documents are prepared. The first one is the detailed "Analysis of the execution of the state budget and monetary policy guidelines". The second one is the opinion on the discharge to the Council of Ministers for the execution of the budget. The President of NIK presents these two documents at summer at a plenary session of the Sejm.

The main **competences of the NIK's Board** consist of giving resolutions and opinions. The Board adopts by resolution:

- a) opinion on the budgetary discharge for the Council of Ministers (the Polish Constitution obliges that the Sejm to present that opinion before the voting of discharge, however that opinion is not binding for the Sejm),
- b) requests on particular problems to be considered by the Sejm in relation to the activities of the authorities performing public tasks,
- c) post-audit information containing charges on the activity of the Members of the Council of Ministers, the Heads of central government offices, the President of the National Bank of Poland, Chancellery of the President of the Republic of Poland, the Chancellery of the Sejm, the Chancellery of the Senate, the Supreme Court, the Supreme Administrative Court, the National Council of the Judiciary, the Constitutional Tribunal, the Commissioner for Civil Rights Protection, the

- Children’s Commissioner, the National Broadcasting Council, the Inspector General for the Protection of Personal Data, the Institute of National Remembrance – the Commission for the Prosecution of Crimes against the Polish Nation, the National Electoral Office, and the National Labour Inspectorate,
- d) the draft statute of the NIK,
 - e) the draft of financial plan of the NIK,
 - f) the annual work plan of the NIK.

The board of NIK gives its opinion on audit programs presented by the President of the NIK and communications on the results of major audits, as well on other issues presented by the President of the NIK or by at least one third of the Members of the board.

2.2. Regional Chambers of Auditors (pl. *regionalne izby obrachunkowe*)

2.2.1. Legal Frameworks of the Regional Chambers of Auditors

In Poland the supervision and the audit of the financial management of local governments is conducted by a special, separate body: the Regional Chambers of Auditors (pl. *regionalne izby obrachunkowe*, RIOs). The legislator announced its creation passing the Local Government Act of March 8, 1990¹⁰. According to its article 86 the organs exercising supervision over the activity of local government are: the Prime Minister and provincial governors (pl. *wojewoda*) and regarding financial matters – the Regional Chambers of Auditors. In fact, the RIOs were established under the Regional Chambers of Auditors Act of Oct. 7, 1992¹¹ whose provisions came into force on 1 January 1993. The role of the RIOs was determined also in the Constitution of the Republic of Poland from 1997. The implementing measures for

10 Ustawa z 8 marca 1990 r. o samorządzie terytorialnym – Local Government Act of March 8, 1990 (Dz.U. vol. 16, item 95, with amendments). The current title of the act: Ustawa o samorządzie gminnym [Communal Self-Government Act].

11 Ustawa z 7 października 1992 r. o regionalnych izbach obrachunkowych [Regional Chamber of Auditors Act of Oct. 7, 1992 (Dz.U.1992, vol. 85, item 428, with amendments).

that Act are included now in the Prime Ministers Regulation of July 16, 2004¹². According to the article 171 of the Polish Constitution the legality of the actions taken by a local government units shall be subject to the supervision. The organs exercising supervision over the activity of local government are: the Prime Minister and the provincial governors and regarding financial matters – the Regional Chambers of Auditors.

Working on the Regional Chambers of Auditors Act, the Polish legislator extensively made use of European experiences (especially the French and the German ones). However, finally no reference was made to any specific legal solutions of the countries of Western Europe. The Act is an original idea of Polish law.¹³

2.2.2. Organisation of the Regional Chambers of Auditors

Each RIO is headed by its **President** who is appointed by the Prime Minister for a term of office of six years. Presidents manage the Chambers' everyday work and make most executive decisions. In each Chamber one or more **Vice-presidents** are appointed out of the members of the Board by the Prime Minister upon a proposal of the Chamber's president. The President chairs **the Chamber's Board** (pl. *Kolegium Izby*) that is a public body composed of President and other members of the Board. Decisions, provisions and opinions of the RIO's Board in matters covered by the RIO's Act are taken in the form of a resolution by **the adjudicating panels** composing of three members of the Board. Each resolution may be appealed to the RIO's Board within 14 days of its receipt (article 20 RIOs Act).

In the frame of each RIO – apart the above-mentioned RIO's Board – there is another public body: the **commission adjudicating in cases of public finance discipline violation** that acts on the basis

12 Rozporządzenie Prezesa Rady Ministrów z dnia 16 lipca 2004 r. w sprawie siedzib i zasięgu terytorialnego regionalnych izb obrachunkowych oraz szczegółowej organizacji izb, liczby członków kolegium i trybu postępowania [Regulation of the Council of Ministers of July 16, 2004 on the seats and territorial scope of regional audit chambers and the detailed organization of the chambers, the number of members of the college and procedure to be followed] (Dz.U. vol. 167, item 1747).

13 EUROAI, Regional Public Sector Audit in Poland, European Organisation of Regional External Public Finance Audit Institutions, www.eurorai.org, last accessed April 6, 2014.

of the Public Finance Discipline Violation Liability Act of Dec. 17, 2004¹⁴. The regional commission compose of its President (who fulfils in the same time the function of the vice-president of the RIO), his Vice-president(s) and 3–9 regional commission’s members. The term of office of the commission lasts four years (article 22 of RIOs Act).

2.2.3. Functions of the Regional Chambers of Auditors

The functions of the RIO can be divided into **four main categories**: the supervision, the audit, the opinions-giving, the adjudication in the matters of public finance discipline violation, the activities related to instruction, the information and training.

Firstly, the Regional Chambers of Auditors are state bodies of **supervision of financial activities of local government units** (the legal provisions on the supervisory competences of the RIOs apply respectively to the territorial unions). The only criterion of this supervision is the **legality** of the taken actions what is guaranteed by the article 171 par. 1 of the Constitution (*The legality of the actions taken by a local government units shall be subject to the supervision*). The material scope of the supervisions covers **resolutions and bylaws** of local government units concerning:

- the procedure of passing the budget and changes therein,
- the budget and the budget modifications,
- the incurring the liabilities that influence the public debt of local government unit and the granting of the loans,
- the principles and the scope of the allocation of subsidies from the budget of local government,
- the local taxes, fees and charges,
- the voting of approval for the local executive for its budget execution,

14 Ustawa z 17 października 2004 r. o odpowiedzialności za naruszenie dyscypliny finansów publicznych [Public Finance Discipline Violation Liability Act of Dec 17, 2004] (consolidated text, Dz.U. 2005, vol. 14, item 114, with amendments) hereinafter referred to as the Discipline Act, for more details on discipline violation see chapter 6.

- the Local Government Multiannual Financial Forecast (WPF) and changes therein (article 11 par. 1 RIOs Act).

In the case of a **serious breach of law**, the RIO can declare the **invalidity** of a resolution or directive undertaken in the all above-mentioned fields, as a whole or only partially (article 11 par. 1 in the relation with art 18 para. 1 point 1 of RIOs Act) In case of a **minor breach of law**, the RIO only points out that the reviewed act has been issued with breach of law (article 11 para. 3 RIOs Act). Appeals against the decisions on the invalidity of resolutions or bylaws considered by the RIOs to be invalid may be filed in the administrative courts.

Regarding **the budgetary supervision**, the RIOs have the special competences. Namely, the decision-making authority of a local governments units is obliged to pass the budget resolution before the beginning of the budget year or – in specifically justified cases – not later than by 31 January of the budget year (article 239 PFA). In case of failure to vote budgetary resolution by the decision-making authority till the 31 January of the financial year, the RIO determines the budget of the local government unit by the end of February but only for the own and assigned tasks (article 240 para. 3 PFA). If the budget resolution is not passed by the local governments units to the 31 January, the RIO is obliged to establish the budget of local governments units till the end of the February (article 11 para. 2 RIOs Act). However, if the decision-making authority pass the budgetary resolution after the 31 January the RIO does not have the sufficient basis to state the invalidity of the resolution.¹⁵

Secondly, the RIOs have the competences concerning the **audit of the financial management and public procurements** of local governments units, unions and associations of municipalities, unions and associations of districts, the associations of municipalities and districts, local government organisational subsidiary units including legal entities, other entities in terms of their use of grants awarded from the budgets of local governments.

15 E. Ruśkowski, J.M. Salachna (eds.), *Finanse publiczne...*, p. 946.

There are four categories of audits carried out by the RIOs:

1. **The comprehensive audit of the entire financial management** of local governments units – performed by the RIOs at least every four years. The scope of these comprehensive audits determined by the resolution of the March 17, 2011 of the National Council of the Regional Chambers of Audit¹⁶ n°2/2011 covers: the issues of general organisation (the management, the internal organisational and legal regulations, the general data about local government unit, i.e. the number of entities supervised by the local government unit), the accounting and reporting, the budgetary revenues and expenditures, the public debt, the property management, the financial settlement with local government organisational subsidiary units.
2. **The problem-focussed audits** – concerning the specific financial matters (e.g. the audit of the public procurement, the audit of subsidiary units of local government units).
3. **The unscheduled audits** – conducted if there is such need or upon proposal of the authorities and bodies specified by law.
4. **The verifying audits** – their objective is to verify the correctness of implementation of previous audit conclusions.¹⁷

The audit of the financial management of the entities falling under audit of the RIOs, including the implementation of tax obligations and public procurement, is realised on the basis of criteria of compliance with laws and regulations and the conformity of the documentation with the state of affairs. However, the criteria of purposefulness, reliance and economic prudence are applied for the realisation of the public administration tasks realised by the audited entities on the basis of laws or agreements (article 5 of RIOs Act).

16 The National Council of Regional Chambers of Auditors is composed of the Presidents of RIOs and one representative of each RIO's Board (32 people) and is responsible i.e. for submitting the proposition of the relevant part of the state budget concerning the RIOs, dissemination of the achievements and experiences of RIOs, agreeing plans and training programs for employees of RIOs, coordinating plans and programs of control, submitting annually to the Sejm and Senate reports of the RIOs activities and the execution of the budget by the local government units (art. 25a RIOs Act).

17 C. Kosikowski, E. Ruśkowski (eds.), 2006, *op. cit.*, p. 806.

The RIO's inspectors in the course of their controls have the rights to:

- request the necessary information concerning the activities of audited entities (in particular in the field of financial management of budget execution and financial management);
- enter to the audited entities;
- examine the documentation relating to the disposition of cash, including cash state audit;
- insight into documentation relating to the management of material resources;
- insight into the documents related to the financial management of the audited entity;
- protect the documents and the other evidences;
- look into the individual tax documentation of the entities incurring public burdens for local government units;
- access to personal data relating to the qualifications and salaries of local government units' employees;
- prepare or commission the preparation of the copies and the extracts of documents needed to audit.

On the other hand, the employees of audited entities are required to provide the inspector oral or written explanations on matters relating to the subject of audit in the scope of official duties entrusted to them (article 8 RIOs Act).

On the basis of results of the audits RIO addresses to the audited entity post-audited information explaining the sources and causes of faults, their size, the responsible persons and proposals to remove them and to improve the verified activity. The post-audit information is transmitted to the audited entity not later than 60 days from the date of signing the audit minute. The audited entity is obliged, within 30 days of receipt of post-audit information, to inform the RIO about the implementation of the recommendations or the reasons of failure of doing it. It is possible to raise an objection against the motions of the post-audit information to the RIO's Board (article 9 of RIOs Act). The

Board can accept or reject such objections. Before deciding on the matter of an the the Board may do additional checks. The decision about the objection should be issued within 30 days (article 25b of RIOs Act).

Thirdly, the RIOs' remit allows them to **give opinions** in the matters enumerated in the article 13 the RIOs Act. These opinions, made up by three members of the RIO's Board, even if do not have the binding force, influence the quality of legal acts and decisions of local governments units. The RIOs's opinions concern the following issues:

- ways of redemption of securities or paying back credits and loans by the local government units;
- ways of financing the budget deficit and the public debt forecast by the local government units;
- budgets drafts submitted by the local government units¹⁸;
- information on the reports for the budget execution for the first half of the budget year as well the annual reports submitted by Boards of local government units;
- proposals of the Review Commission of the decision-making authorities of local government units concerning the vote of budgetary discharge for the local executive bodies for its budget execution as well as the resolutions adopted by the municipality councils to deny the vote of approval to the head of the commune;
- draft of long-term financial forecasts submitted by executive boards of local governments units (article 13 RIOs Act).

The RIOs Act provide also (article 10a) that if there is a need of the indication for the authorities of local government unit the RIO may – on the basis of supervision, audit and giving-opinion activity – elaborate the **report on the state of the financial management of the local government unit**. The RIO's Board determines by a resolution scope and deadline for the preparation of the report and appoint a member of the RIO's Board responsible for the preparation of report's draft. After

18 The negative opinion of the RIO's Board on the budget bill of local government units do not stop the budgetary procedure, however, the executive body of local government units is obliged to present that opinion to the decision-making authority with the answer to the objections.

passing the resolution containing the report, the Board's President transmits the report to executive body and decision-making authority of the local government unit. Local government unit's bodies can bring the objections to the report to the RIO's Board within 30 days of its receipt. The Board in a separate resolution dismisses the objections or eventually take them into account and change the report. The report is published. Such a report can also affect local government unit's unions. Then it is transferred to the bodies of local governments units belonging to that union.

Fourthly, next to each of the RIOs there are **regional commissions adjudicating in cases of public finance discipline violation** which act as organ of first instance in matters of noncompliance with principles of public finance management and public procurement defined by the Discipline Act. The second instance in such proceeding is the central adjudicating commission at the Ministry of Finance.

Fifthly, within the scope of supervision and control, the RIOs fulfil the competences concerning the **information, instruction and training**. In each RIO there are special departments created to that aim. The employees of such RIO's departments instruct on the supervision and audit works, but also on all kinds of legislation, analytical and practical works which affect the budget execution and the financial management of local government units. Training is provided not only to employees of the RIOs but also to local government officials in matters of budget and financial management, public procurement and issues resulting from the supervisory and auditing activities of the RIO (unfortunately according the employees of local government units such training are not sufficient and should be organised more often).

PUBLIC FINANCE DISCIPLINE VIOLATION LIABILITY

1. Legal Framework

In the present state of law the principles, the procedures and the scope of the Discipline Act are regulated in the separate law from 2004. Previously, these issues were placed in the Public Finances Act of 1998¹. With a significant extension of material and personal scope of public finance discipline violation liability it was decided to enact a separate law.

The term “public finances discipline” was introduced to the Polish legal system in the PFA of 1998. Previously the legislator used the narrower term “budgetary discipline”. There is no legal definition of public finances discipline. It’s significance can be reconstructed from the legal provisions. The concept of the **public finances discipline** means the compliance with legally defined rules of determination, collection and enforcement of duties representing public funds and its management at the microeconomic level, i.e. in the public finance sector units.² **The public finances discipline violation** means an act or an omission that violates binding law concerning the management of public property and public funds, and is detrimental to the public finances³.

Despite the repressive nature of the public finances discipline violation it is not the penal responsibility because it is connected

1 Ustawa z 26 listopada 1998 r. o finansach publicznych [Public Finances Act of Nov. 26, 1998 (Dz.U. vol. 155, item 1014, with amendments).

2 C. Kosikowski, E. Ruśkowski (eds.), 2008, *op. cit.*, p. 851.

3 Z. Ofiarski, *Prawo finansowe* [Financial law], Warszawa 2010, p. 435.

with the realisation of official duties by employees. So the analysed responsibility has the disciplinary character.

2. Material Scope of Liability

The discipline Act contains the extensive catalogue of acts or omissions that constitutes public finances discipline violation. Z. Ofiarski⁴ has divided them into six categories: the acts or omissions connected with collection of public funds, the acts or omissions connected with spending of public funds, the acts or omissions connected with public procurements, the acts or omissions connected with conclusion of the concession, the acts or omissions connected with contracting and implementation of obligations, and finally other acts and omissions.

The acts or omissions connected with collection of public funds include e.g.: the non-determination of duties of the Treasury, the local government units or other public sector entities, or the determination of the lower amount than that resulting from the correct calculation; the failure to collect or to claim duties of the Treasury, the local government units or other public sector entities either the collection or claiming of lower amount of duties than the resulting from correct calculation; contrary to the provisions remission of duties of the Treasury, the local government units or other public sector entities, its repayment deferral or rescheduling of the instalments or admission to the prescription of this duty; the failure to timely pay the appropriate amount of collected revenues to state or local government unit budget.

Among **the acts or omissions connected with spending of public funds** are classified e.g.: the allocation of the income generated by the budgetary units for the expenses incurred in this unit (let's remain that budgetary units, e.g. courts are obliged to pay all revenues to the state budget); the transmission of grants with the violation of the binding rules or mode of its transmission; the spending of grants contrary with the purpose specified by entity providing a grant; the destination of

4 *Ibidem*, p. 436–441.

the reserve funds for the purpose other than the aim specified in the granting decisions.

The third category of acts or omissions that constitute the public finances discipline violation is **connected with public procurements**, e.g. the description of object of the public procurement in a way that could hamper fair competition; the determination of the value of a procurement contract or a part thereof, if it affected the obligation to apply the provisions of the public procurement or the application of provisions relating to public procurement of lower value; the description of a method for evaluating of the fulfilment of the conditions of participation in the proceeding of public procurement that is unrelated to the subject of the contract or disproportionate to this subject; determining the evaluation criteria; failure to transmission to the publication in the Official Journal of the European Union or non-publication in the Public Procurement Bulletin of the contract notice, the notice of change in the contract notice or the notice of granting contract; failure within the appropriate deadline the President of Procurement Office to initiate the procedure of public procurement.

The public finance discipline violation is **signing the concession contract** are e.g. with the licensee which has not been selected in accordance with the provisions of the concession for construction works or services; with the violation of the provisions of the concession for construction works or services relating to the obligation of transferring or publishing notices about the procedure for signing the concession contract; if the object thereof or the conditions are defined in a manner that violate the rules of fair competition; without the writing form; omitting time limit in which it can be concluded; for the time longer than specified in the legal regulations.

Among **the acts or omissions connected with contracting and implementation of obligations** are e.g.: the incurring obligations without the authorisation in the Budget Act, the budget resolution or financial plan or in excess of the scope of the authorisation or in breach of the rules on incurring obligations by the entities of public sector; the failure to perform the obligations of the entity, including the obligation

to repay the amount of duty, the tax overpaid or wrongly paid social or health security contributions.

In the last group (**other acts or omissions**) can be classified e.g. the failure to conduct the internal audit in the public sector units obliged to that or the failure to perform the inventory or conducting the inventory in a manner contrary to the legal provisions.

3. Personal Scope of Liability

The personal scope of Discipline Act is relatively wide, because according to the article 5 of Discipline Act to the liability for public finance discipline violation are subjected:

- a) the persons belonging to the budget execution authorities or authorities that execute other financial plans of public sector entities or an entity that not classified as public finance sector unit receiving public funds or managing the property of these entities;
- b) the managers of public sector entities;
- c) the employees of public sector entities executing the obligations related to the financial management or activities determined in the regulations on public procurement;
- d) the persons managing the public funds transferred to entities not classified as public finance sector unit.

4. Principles of Liability

Firstly, the liability is based on the **principle of guilt**, what means that it can be held only by the person for witch guilt can be assign at the time of the infringement.

Secondly, according to the general principle the disciplinary liability **is independent from the responsibility defined by the other legal provisions**. However in the case of the opening the proceeding for the offense, a treasury offense, infringement or treasury infringement at

the same time in the case of the act constituting a violation of public finance discipline, the disciplinary proceeding is suspended until the completion of other proceedings.⁵

Thirdly, if – during the adjudication on the infringement of public finance discipline, the act other than **the act binding at the time of committing of the infringement**, the new one applies, however the old one should be applied it is more favourable to the defendant. What is more, if according the new act or omission covered by the adjudication is no longer a of public finance discipline violation, the punishment becomes blurred by law.

Finally, the punishing a person responsible for public finance discipline violation does not limit the rights of the State Treasury, local governments units or other units of sector of public finances to claim compensation for the suffered damage. Compensation can be claimed on the basis of civil law and labour law in the event of causing damage to the employer by the employee.⁶

5. Institutions Adjudicating in the domain of Public Finances Discipline Violation

The proceeding in the matter of the public finances discipline violation has two-instance character. The adjudicating authorities in the first instance are the commissions adjudicating in cases of public finance discipline violation, while the Main Adjudication Commission fulfils the role of the second instance.

There are four categories of the commissions adjudicating in cases public finance discipline violation:

- a) the Common Adjudicating Commission – responsible in the cases of the public finance discipline violation in the execution of the state budget in the parts of a particular legal status (e.g. the

5 Ibidem, p. 445.

6 T. Robaczyński, P. Gryska, *Dyscyplina finansów publicznych. Komentarz* [Public Finances discipline. Commentary], Warszawa 2006, p. 211.

Chancellery of the Sejm, the Chancellery of the President of the Republic, the Supreme Court, the Constitutional Tribunal, the Supreme Chamber of Audit, the Ombudsman). The Common Adjudicating Commission is established in the Office of the President of Poland;

- b) the Adjudication Commission of the Office of the Prime Minister – responsible i.e. for matters of public finance discipline violation during the execution of the budget of the Office of the Prime Minister, the local-government appeal boards or bodies supervised by the Prime Minister,
- c) the ministerial commissions next to the ministers in charge of a division or the divisions of public administration (e.g. the Adjudicating Commission next to the Minister of Justice, the Adjudicating Commission next to Finance Minister),
- d) the regional adjudicating commissions next to the regional audit chambers – responsible mainly for the matters of public finance discipline violation by local government units.

In the proceeding of the public finance discipline violation took part the bodies that fulfil the role of prosecutor. In the first-instance proceeding to this aim are spokesmen for the public finances discipline violation and their substitutes. In the second instance there are the Main Spokesmen for the Public Finances Discipline Violation and his substitutes as well.

6. Penalties for Violation in the domain of Public Finances Discipline Violation

The penalties for the violation of public finance discipline defined by the Discipline Act are not so severe. The Discipline Act provides: warning, reprimand, fine, prohibition of the fulfilling of the function associated to disposing of public funds. In the majority of the punished persons the penalty of warning is inflicted (2012 in 88,2% cases among 416 persons punished in). The penalty of reprimand was inflicted in that year in 10,1% of cases, the penalty of fine was inflicted in 1,7%

and the penalty of prohibition of the fulfilling of the function associated to disposing of public funds was not inflicted in 2011 (in 2012 one person has obtain this prohibition).⁷

7 Sprawozdanie z działalności Głównej Komisji Orzekającej w Sprawach o Naruszenie Dyscypliny finansów publicznych oraz zbiorcze sprawozdanie z działalności komisji orzekających pierwszej instancji w 2012 r. [Report on the activities of the Main Adjudication Commission and a summary report on the activities of the commissions adjudicating in the first instance in 2012].

BIBLIOGRAPHY

- Annual Report 2012 on the activity of the Polish Supreme Audit Office, Warszawa 2013, p. 7-12, www.nik.gov.pl
- Arthuis J., Raport d'information no388 du 9 juillet 2003 de la Commission des Finances, du contrôle budgétaire et des comptes économiques de la Nation sur l'état d'avancement de la mise en oeuvre de LOLF [Information report vol. 388 of July 9, 2003 of the Finances, Budgetary Control and economic national accounts on the status of the implementation of the LOLF].
- Będzieszak M., Budżet zadaniowy – wyzwania dla państwa i samorządu terytorialnego [Performancne budgeting – challenges for the state and local government] in: L. Patrzalek (ed.), Stan i kierunki rozwoju finansów publicznych samorządu terytorialnego [State and development directions of local government units' public finances], Poznań–Wrocław 2007.
- Chevauchez B., Actualité des grands principes budgétaires [Actuality of basic budgetary principles] in: A. Roux (ed.), Finances publiques [Public finances], Paris 2006.
- Chevauchez B., Réforme de l'État: les perspectives ouvertes par la LOLF [State reform: perspectives opened by the LOLF] in: Ferrandon B., Budget de l'État et finances publiques [State budget and public finances], Paris 2005.
- Dębowska-Romanowska T., Fundusze systemu budżetowego [Funds of budgetary system] in: M. Weralski (ed.), System instytucji prawno-finansowych PRL [System of legal and financial institutions of PRL], t. 2, Wrocław 1982.
- Dębowska-Romanowska T., Prawo finansowe. Część konstytucyjna wraz z częścią ogólną [Financial Law. Constitutional part with the general one], Warszawa 2010.
- Dębowska-Romanowska T., Zagadnienia prawne wydatków publicznych na rzecz osób trzecich [Legal issues of public expenditures on behalf of the third parties], Łódź 1993.
- EUROAI, Regional Public Sector Audit in Poland, European Organisation of Regional External Public Finance Audit Institutions, www.euro-ai.org
- Franek S., Będzieszak M., Lubińska T., Wdrażanie budżetu zadaniowego w jednostkach samorządu terytorialnego [Implemenation of performance budgeting in local government units], Finanse 2010, no 3.

- Hood C., Public administration and public policy: Intellectual challenges for the 1990s, *Australian Journal of Public Administration*, 1989, vol. 48.
- Juja T., Kotlińska J. (eds.), Stan i kierunki rozwoju finansów publicznych [State and development directions of public finances], Poznań 2010.
- Kosikowski C., *Finanse publiczne i prawo finansowe [Public finances and financial law]*, Warszawa 2001.
- Kosikowski C., *Naprawa finansów publicznych w Polsce. Przyczyny, metodologia, kierunki i propozycje [Public finances recovery in Poland. Causes, methodology, directions and propositions]*, Białystok 2011.
- Kosikowski C., *Nowa ustawa o finansach publicznych. Komentarz [New Public Finances Act. Commentary]*, Warszawa 2010.
- Kosikowski C., Ruśkowski E. (eds.), *Finanse publiczne i prawo finansowe [Public finances and financial law]*, Warszawa 2008.
- Kosikowski C., Ruśkowski E. (eds.), *Finanse publiczne i prawo finansowe [Public finances and financial law]*, Warszawa 2006.
- Kosikowski C., *Ustawa o finansach publicznych. Komentarz [Public Finances Act. Commentary]*, Warszawa 2011.
- Lubińska T., *Budżet zadaniowy w Polsce. Reorientacja z wydatkowania na zarządzanie pieniędzmi publicznymi, [Performance budgeting in Poland. Reorientation from the spending to management of public funds]*, Warszawa 2007.
- Lubińska T., Strąk T., Lozano-Platonoff A., Będzieszak M., Godek M., *Paradygmat budżetowania zadaniowego [Paradigm of performance budgeting]* in: T. Lubińska (ed.), *Kierunki modernizacji zarządzania w jednostkach samorządu terytorialnego [Directions of management modernisation in local government units]*, Warszawa 2011.
- Ministerstwo Finansów, *Kontrola zarządcza w sektorze finansów publicznych. Istota, unormowania prawne i otoczenie. Kompendium wiedzy [Management control in public finances sector. Essence, legal provisions and environment]*, February 2012.
- Misiąg W., *Zasady konstrukcji budżetu zadaniowego polityki społecznej [Principles of construction of performance budgeting of social policy]* in: Misiąg W., Hryniewicka A., *Koncepcja i wskaźniki budżetu zadaniowego a bilans potrzeb pomocy społecznej [Conception and indicators of performance budgeting and the recapitulation of social security needs]*.
- OECD, *Modernising Government. The way forward*, Paris 2005.
- Ofiński Z., *Prawo finansowe [Financial law]*, Warszawa 2010.
- Owsiak S. (ed.), *Budżet władz lokalnych [Budget of local government units]*, Warszawa 2002.

- Philip L. (ed.), *Dictionnaire encyclopédique de finances publiques* [Encyclopaedic dictionary of public finances], Paris 1991.
- Podstawka M. (ed.), *Finanse* [Finances], Warszawa 2010.
- Postuła M., Perczyński P. (eds.), *Budżet zadaniowy w administracji publicznej* [Performance budgeting in public administration], Warszawa 2010.
- Robaczyński T., Gryska P., *Dyscyplina finansów publicznych. Komentarz* [Public Finances discipline. Commentary], Warszawa 2006.
- Robinson M., Last D., *A Basic Model of Performance-Based Budgeting, Technical Notes and Manuals of International Monetary Fund*, January 2009.
- Ruśkowski E. (ed.), *Finanse publiczne i prawo finansowe* [Public finances and financial law], t. 2, Warszawa 2000.
- Ruśkowski E., Salachna J.M. (eds.), *Finanse publiczne. Komentarz praktyczny* [Public finances. Practical commentary], Gdańsk 2013.
- Ruśkowski E., Salachna J.M. (eds.), *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny* [New Act on Public Finances with the Introductory Act], Gdańsk 2010.
- Rutkowska-Tomaszewska E., *Jednostki sektora finansów publicznych* [Public finances sector units] in: J. Blicharz (ed.), *Prawne aspekty prywatyzacji* [Legal aspects of privatisation], Wrocław 2012.
- Sawicka K., *Formy organizacyjno-prawne jednostek sektora finansów publicznych* [Organisational and legal forms of public finances sector units] in: E. Ruśkowski (ed.), *System prawa finansowego* [System of financial law], t. 2., Warszawa 2010.
- Stiglitz J.E., *Ekonomia sektora publicznego* [Public sector economy], Warszawa 2004.
- Szpringer Z., *Recent developments in public finances in Poland*, www.ec.europa.eu.
- Woźniak B., Postuła M. (eds.), *Budżet zadaniowy metodą racjonalizacji wydatków* [Performance budgeting as a method of expenditures rationalisation], Warszawa 2012.
- Zawadzka-Pąk U.K., *Performance budgeting and the multiannual programming of public finances*, "Białostockie Studia Prawnicze" 2014, vol. 16.
- Zawicki M., Mazur S., Bober J. (eds.), *Zarządzanie w samorządzie terytorialnym. Najlepsze praktyki* [Management in local government units. Best practices], Kraków 2004.

